

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

QUICKIE, LLC,

Plaintiff,

07 Civ. 10331 (RMB) (DFE)
ECF CASE

-against-

GREENBERG TRAURIG, LLP,

**NOTICE OF MOTION
FOR SUMMARY JUDGMENT**

Defendant.

Sirs:

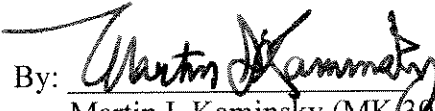
Please take notice that, upon the Declaration of Paul J. Sutton dated July 22, 2008, the exhibits annexed thereto, the accompanying Rule 56.1 Statement, and the pleadings and prior proceedings herein, defendant Greenberg Traurig will move this Court (Hon. Richard M. Berman), on September 16, 2008, at Courtroom 21D at the United States Courthouse 500 Pearl Street, New York New York, New York 10007 for an summary judgment, pursuant to Rule 56 of the Federal Rules of Civil Procedure, dismissing this action on the ground that defendant is entitled to judgment as a matter of law granting defendant such other and further relief as the Court may deem just and proper.

Please take further notice that, pursuant to the Stipulation and Order scheduling the motion, all answering papers on this motion are due on or before August 26, 2006.

Dated: July 22, 2008
New York, New York

Yours, etc.,

POLLACK & KAMINSKY

By: 
Martin I. Kaminsky (MK 3033)
Justin Y. K. Chu (JC 7810)
114 West 47th Street
New York, New York 10036
Tel No. (212) 575-4700
Fax No. (212) 575-6560
Attorneys for Defendant
Greenberg Traurig LLP

TO:

Richard I. Janvey
Joan M. Secofsky
DIAMOND MCCARTHY, LLP
620 Eighth Avenue
New York, New York 10018
Tel. No. (212) 430-5400
Fax No. (212) 430-5499
-and-

Allan Diamond
Walter J. Scott
Stephen T. Loden
DIAMOND MCCARTHY, LLP
Two Houston Center
909 Fannin, Suite 1500
Houston, Texas 77010
Tel. No. (713) 333-5100
Fax No. (713) 333-5199
Attorneys for Plaintiff
Quickie LLC

SUTTON DECLARATION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

QUICKIE, LLC,

Plaintiff,

-against-

GREENBERG TRAURIG, LLP,

Defendant.

07 Civ. 10331 (RMB) (DFE)
ECF CASE

**DECLARATION
IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT**

Paul J. Sutton states and declares, under the penalty of perjury:

1. I am a shareholder of defendant Greenberg Traurig LLP ["GT"], and am Senior Chair of its Intellectual Property & Technology Practice.

2. I make this Declaration in support of GT's move for summary judgment, pursuant to Fed. R. Civ. P. 56, dismissing this action against GT on the ground that, as a matter of law, GT is not liable to plaintiff Quickie LLP ["Quickie"].

3. This Declaration is based on my personal knowledge and both the sworn testimony and documentary evidence from the depositions in this action. For the convenience of the Court, attached at the end of this Declaration is a list of the exhibits (including deposition excerpts and documents) presented in support of this motion, the authenticity of which I hereby affirm.

SUMMARY OF THE MOTION

4. This is a legal malpractice action based on the alleged failure of attorneys for Plaintiff Quickie LLC ["Quickie"] to pay, or to advise Quickie to pay, a maintenance fee ["the Maintenance Fee"] which was due during the period May 23, 2003 through May 23, 2004 on Quickie's Patent No. 6,066,160 ["the '160 Patent"]. That non-payment resulted in the loss of the '160 Patent [see Moving Exhibits AO and AP for Quickie's Complaint and GT's Answer].

5. As detailed in the accompanying moving memorandum, GT contends, in moving for summary judgment, that:

[a] GT was not Quickie's attorney as to the '160 Patent when the Maintenance Fee became due. Another law firm had replaced and succeeded GT before the Maintenance Fee became due; and that other law firm represented Quickie as to the '160 Patent during the *entire* period in which the Maintenance Fee could have been paid. Hence, GT can not be contended to have committed legal malpractice for the failure to pay the Maintenance Fee;

[b] the fact that Quickie's successor counsel could have assured that the Maintenance Fee was paid, and thus kept the '160 Patent alive, is and provides a complete defense to any claim against GT based on the non-payment of the Maintenance Fee;

[c] Quickie's claims for negligence and negligent misrepresentation are legally insufficient since they are based on the same operative facts as Quickie's malpractice claim and thus impermissibly duplicative of it; and

[d] in any event, Quickie's claims against GT are barred by the statute of limitations, since the alleged wrongdoing and harm occurred over three years before Quickie filed its Complaint and the continuous representation doctrine does not apply here.

SUMMARY OF THE PERTINENT FACTS

6. Quickie has admitted that, prior to Quickie's replacement of GT, "Todd Sharinn advised Quickie that maintenance fees were due on the '160 Patent 3.5 years from the date of issuance . . ." [Mov. Ex. H ¶21; see also Mov. Ex. Q at 26-27]. Sharinn was the lawyer at GT and a predecessor firm who had acted as Quickie's patent counsel.

7. GT was not counsel to Quickie when the Maintenance Fee became and was due, and thus is not responsible for the failure to pay the fee. Rather, GT had previously been replaced by Thelen Reid & Priest LLP ["Thelen"] before the Maintenance Fee was due.

8. The Maintenance Fee for the '160 Patent first became due on November 23, 2003. Quickie could actually have prepaid it beginning on May 23, 2003; and Quickie had a year thereafter (i.e. until May 23, 2004) in which to pay the fee. For simplicity, since the Maintenance Fee could have been paid on May 23, 2003, I will refer herein to that date as the "due date", even though the fee was not actually due until six months thereafter, i.e. on November 23, 2003.

9. By May 2003, i.e. the first date in which the Maintenance Fee could be paid, Thelen had replaced GT as Quickie's lawyer.

10. On March 4, 2003 --- months before the Maintenance Fee became due --- Quickie revoked, in a writing submitted to the U.S. Patent & Trademark Office ["PTO"], any authority that GT had previously had as to the '160 Patent and appointed Thelen (specifying Robert Krebs and several other Thelen attorneys) as its counsel for all further communications as to the '160 Patent ["Quickie's Revocation/Appointment"] [Mov. Ex. A]. As Quickie has admitted, under oath, this constituted the replacement of GT by Thelen as to all aspects of the '160 Patent, "including . . . timely payment of the Maintenance Fee" [Mov. Ex. F; Mov. Ex. E at 1-4; Mov. Ex. Q at 95-102].

11. GT was formally notified of that change and Quickie's Revocation/Appointment by a Notice from the PTO on April 2, 2003, a month and a half *before* the Maintenance Fee first became due [see Mov. Ex. B].

12. GT was also advised by Quickie's General Counsel Alan Fell and one of its senior members Dr. Stephen Colvin that GT would no longer represent Quickie as to the '160 Patent [Mov. Ex. T at 96, 101, 105, 153; Mov. Ex. S at 291-94; Mov. Ex. R at 48].

13. Thereafter and as a result, GT ceased all activity as to the '160 Patent, and GT's database, noting the transfer of responsibility for the '160 Patent to another firm, ceased tracking it [see detailed discussion *infra*].

14. Thelen, although having full responsibility for the '160 Patent and the Maintenance Fee [Mov. Ex. K; see also Mov. Exs. E, F, G], failed to advise Quickie that the Maintenance Fee was due, or to pay the Maintenance Fee for Quickie, resulting in the loss of the patent.

15. In 2006 and 2007, Quickie (through another new patent counsel) petitioned unsuccessfully to revive the '160 Patent [Mov. Exs. D through G; see also Mov. Exs. H, L, M].

16. In its sworn statements and other filings to the PTO, Quickie confirmed that GT had had no responsibility as to the Maintenance Fee and that Thelen (rather than GT) was solely responsible for the failure to pay the Maintenance Fee [see Mov. Exs. E and F]. For example, in its Supplement to Petition, Quickie stated [Mov. Ex. E at 1-4]:

"[GT's] responsibility for the '160 Patent ended prior to the time period when the payment of a first Maintenance Fee was due (see Mov. Ex. A)].

* * *

Thelen Reid & Priest was granted and held sole and full power in the '160 patent from March 4, 2003 through August 14, 2006 (see [Mov. Exs. A and B]). This period of time covered the time period up until May 23, 2004 for timely paying the first maintenance fee, and the entire two-year time period, starting from the date of the '160 patent's expiration to file a remedial Petition under the intention provision (37 CFR 1.378(c)); this two-year expiration period ending on May 24, 2006.

The actions and inactions of Thelen Reid & Priest . . . led the Patent Owner to believe that their [sic] '160 Patent was viable.

* * *

The Patent Owner [Quickie] fully believed that their [sic]

valuable legal rights in the '160 patent would be justly protected by the attorneys and law firm of *Thelen Reid & Priest* when the Patent Owner chose them for representation and executed the Power of Attorney dated March 4, 2003 (see [Mov. Ex. A])". (emphasis added)

17. Quickie's Managing Member, Dr. Aubrey Galloway, also stated *under oath* [Mov. Ex. F, ¶¶1, 2]:

"... I am the Managing Partner of Quickie, LLC, the owner of US Patent No. 6,066,160.

As the Managing Partner for Quickie, LLC, I retained Robert E. Krebs et al. of the *Thelen, Reid & Priest, LLP* law firm to transact all post-issuance proceedings and responsibilities in the Patent and Trademark Office including, but not limited to . . . timely payment of the Maintenance Fee". (emphasis added)

18. Quickie reaffirmed those statements and their accuracy in response to GT's Request to Admit [Mov. Ex. H ¶¶ 11-17; Mov. Ex. I ¶¶18-20, 22-25, 40, 42-43].¹

19. Dr. Galloway and Quickie's General Counsel Alan Fell also reaffirmed those statement in their depositions [Mov. Ex. Q, at 59-64, 83-84, 86-102; Mov. Ex. R at 70-74, 78-81; see also Mov. Ex. L at 4].

20. They also admitted that Quickie has never told the PTO (*to this day*) that any of those statements was inaccurate [*Id.*]. Indeed, several affirmative statements in Quickie's Complaint itself also say the same thing that Quickie told the PTO [Mov. Ex. AO ¶¶ 14, 15, 19].

STATUS OF THE CASE

21. On April 18, 2007, Quickie sued GT and Thelen as well as the principal Thelen partner involved, i.e. Robert Krebs, charging them with "legal malpractice", "negligence" and "negligent misrepresentation" in "fail[ing] to notify Plaintiff before fees were due to maintain the patent" [Mov. Ex. AO ¶2].

22. GT denied all wrongdoing, and asserted several affirmative defenses and cross-claims against the Thelen defendants [Mov. Ex. AP].

23. The Thelen defendants filed a third-party action against Rick Steiner Fell & Benowitz, LLP and Alan Fell and Todd Sharinn (formerly an attorney at GT). Various of those parties then cross-claimed against each other.

24. As shown in the court records, Quickie has settled with Thelen, Krebs, Rick Steiner and Fell, resulting in the dismissal of all claims against them and Sharinn (who was only a third-party defendant), and leaving GT as the sole remaining defendant in the action.

25. I understand that fact discovery has been completed.

26. As shown in the court records, the parties have stipulated that no expert testimony will be presented on this motion; and that no issues as to damages will be raised or need be dealt with on this motion. The parties are in the midst of expert discovery, which is proceeding simultaneously with this motion.

BACKGROUND FACTS

Quickie and the Subject Patent

27. Quickie is the owner by assignment of Patent No. 6,066,160 [“the ‘160 Patent”], issued on May 23, 2000 [Mov. Ex. H ¶1; Mov. Ex. L at 1; Mov. Ex. R at 30-31].

28. Under applicable law and regulations, the owner of a patent must pay periodic maintenance fees to keep the patent in effect.

29. The first Maintenance Fee for the ‘160 Patent was due during the one year period beginning May 23, 2003 through May 23, 2004 [Mov. Ex. L at 1].

¹ Several of Quickie’s specific Responses are outright admissions. In others (unlike those cited here), although Quickie admitted the fact involved, Quickie sought to add a denial of any inference from the admitted fact. GT Objects to such add-ons in Quickie’s Responses (and hereby moves to strike them) as inappropriate. .

30. The '160 Patent "expired" due to non-payment of the Maintenance Fee during that one year period [Mov. Ex. L at 1].

The Law Firms Vis-à-vis the '160 Patent

31. Between 1998 and 2001, Pepe & Hazard LLP ["Pepe"], with whom Sharinn was then associated, represented Quickie in connection with its application for what became the '160 Patent [Mov. Ex. R at 33].

32. Sharinn left Pepe to become an associate of GT in 2001 [Mov. Ex. R at 33]. Thereafter, GT provided services to Quickie as to the '160 Patent until it was replaced by Thelen in the fall of 2002 and spring of 2003 [Mov. Ex. R at 33-34; see details *infra*].

33. Thelen replaced GT as Quickie's counsel with respect to the '160 Patent; and Quickie filed formal papers with the PTO in March 2003 revoking all prior authority of GT as to the '160 Patent and designating Thelen as its attorney and the appropriate counsel for all communications and proceedings as to the '160 Patent [see details *infra*].

34. Alan Fell, a member of Quickie [Mov. Ex. R. at 10], is a lawyer at the Rick Steiner law firm who served as Quickie's General Counsel overseeing its patent counsel [Mov. Ex. R at 25, 86-87; Mov. Ex. T at 230].

Quickie's Knowledge That The Maintenance Fee Would Be Owning

35. Quickie has *admitted* that "Todd Sharinn advised Quickie that the Maintenance Fee was due on the '160 Patent 3.5 years from the date of issuance . . .", failing which Quickie would lose the '160 Patent [Mov. Ex. H ¶21; see also Mov. Ex. Q at 23, 26-27; Mov. Ex. R at 97-99].

36. But, neither Quickie nor its General Counsel calendared the due dates or otherwise assured that the Maintenance Fee would be paid [Mov. Ex. Q at 26-27; Mov. Ex. R at 60-61].

37. A similar reminder was given to Quickie (in connection with another different patent) in April 2004 while the period for payment of the Maintenance Fee on the '160 Patent was still in progress [Mov. Ex. R at 97-99; Mov. Ex. AK].

GT's Calendaring of the Due Dates for the Maintenance Fee

38. GT maintained a database calendaring the due dates for maintenance fees on patents for which GT had responsibility [Mov. Ex. S at 88-89, 167, see also 20-21; Mov. Ex. T at 149].

39. Unlike Pepe, GT made no undertaking to notify Quickie of the due dates for the Maintenance Fee; and GT did not assume Pepe's undertaking to do so [Mov. Ex. S at 271, 273-76, 278, 286-87].

40. But, when Sharinn joined GT, GT put the '160 Patent into GT's internal database system, where it remained until Quickie revoked GT's authority and role as to that patent in March 2003 [Mov. Ex. S at 20, 28-29, 39, 60-61, 66-68, 71-72, 79-81, 93, 96, 100, 167-69, 172-73, 216-17, 249-50; see also 52-53, 62-64, 144-46; Mov. Ex. T at 149; Mov. Exs. A, O, P, AO ¶¶ 14, 15, 19].

41. When GT received Notice of the Revocation/Appointment as to the '160 Patent, GT's database was marked accordingly and GT ceased to follow that patent, since its authority and role as to the '160 Patent had ended [see Mov. Exs. O, P and details *infra*].

Quickie's License with Medtronic and Lawsuit Against Medtronic

42. Quickie sought to get entities capable of turning the '160 Patent into a product to sign licenses for it [Mov. Ex. T at 69-72; Mov. Ex. Q at 37-41; Mov. Ex. R at 60-61].

43. But, only one company, Medtronic Inc., with whom Quickie had another relationship showed any interest [Mov. Ex. T at 69-72; Mov. Ex. Q at 37-41; Mov. Ex. R at 60-61]. The others were not interested [Mov. Ex. R at 28-30; Mov. Ex. Q at 39-40].

44. However, “shortly after the [license] agreement was entered into . . . Medtronic was already trying to break the agreement” [Mov. Ex. T at 72; Mov. Ex. AO ¶9].

45. Medtronic terminated the license [Mov. Ex. R at 25; Mov. Ex. AO ¶9], concluding the technology was not capable of being commercialized [Mov. Ex. R at 25-28; Mov. Ex. Q at 39-40].

46. Quickie was angered by the termination, and later, using Sharinn and GT, sued Medtronic for patent infringement action in early 2002 [“the Medtronic Action”] [Mov. Ex. T at 54-55].

Quickie’s Initial Replacement of GT with Thelen as to the ‘160 Patent

47. In the meantime, Mark Evens, a partner at Thelen, became the brother-in-law of Dr. Colvin of Quickie [Mov. Ex. Q at 56; Mov. Ex. S at 299-300; see also Mov. Ex. R at 47].

48. Quickie told us that it was fully satisfied with Sharinn’s/GT’s services [see also Mov. Ex. Q at 57].

49. But, Dr. Colvin decided to transfer Quickie’s patent work to Thelen to help Evens’ position there [Mov. Ex. S at 293-95, 299-300; Mov. Ex. T at 161-63; cf. Mov. Ex. Q at 55-57].

50. Accordingly, virtually from the outset of the Medtronic case, GT consulted with Thelen and kept it advised as to the ‘160 Patent [Mov. Ex. S at 212, 293-97, 299-302; see also 161-62].

51. That signaled to us that Thelen would likely be assuming responsibility for the ‘160 Patent in place of GT. As I explained in my deposition, “the process began at least as early as April 11, 2002 where Mark Evens was monitoring” the matter [Mov. Ex. S at 212, see also 294-97, 299-302].

52. GT also sent its “file wrapper” for the ‘160 Patent to Thelen in April 2002 [Mov. Ex. V], providing Thelen with full information as to the ‘160 Patent, including the due dates for the Maintenance Fee [Mov. Ex. S at 123-24, 212, 217-18, 309; Mov. Ex. T at 201-02].

53. GT continued to serve as lead counsel in the Medtronic Action, and successfully prosecuted the Markman hearing delineating the scope of the infringement claims [Mov. Ex. Q at 56-57; Mov. Ex. T at 167, see also 161-62].

54. However, promptly after the Court’s Markman decision, Quickie fired GT and substituted Thelen as its counsel [Mov. Ex. W; Mov. Ex. T at 153; Mov. Ex. S at 62-64, 66-67; Mov. Ex. R at 50-51].

55. Quickie’s General Counsel Fell initially told Sharinn that “you and Greenberg Traurig will continue to handle various patent applications” [Mov. Ex. W].

56. But, Fell and Dr. Colvin soon told Sharinn that he and GT were going to be completely replaced as to the ‘160 Patent [Mov. Ex. T at 96-97, 100-01 105, 153, 185-86, 194; see also Mov. Ex. R at 48].

57. Sharinn thus explained in his deposition [Mov. Ex. T at 101]:

“Subsequent to the Markman Hearing, whenever the date was, whether it was the next day or the day after the ruling was issued, my responsibilities to that patent [i.e. the ‘160 Patent] immediately terminated by actions of Steve Colvin and Alan Fell. They told me that flat out, transfer the files, you’re no longer responsible.” (emphasis added)

58. They also confirmed that to me [Mov. Ex. S at 291-94].

59. As a result, on October 16, 2002, GT sent to Thelen not only the papers for the Medtronic Action, but also GT’s “General/Main File” for the ‘160 Patent and its file entitled “U.S. Patent No. 6,066,160 File History & Prior Art: [Mov. Ex. X items 4 and 5], i.e. the

complete documentation, history and other information regarding the '160 Patent [Mov. Ex. T at 198-200; Mov. Ex. S at 308-10, 314-19].

The Medtronic Reexamination Proceeding

60. In November 2002, in reaction to the Markman decision, Medtronic petitioned the PTO to "reexamine" the '160 Patent, i.e. to review the patent and redetermine whether the invention is actually patentable and, if so, to what extent ["the Reexamination Proceeding"] [Mov. Ex. R at 83; see also Mov. Ex. N; Mov. Ex. Q at 183-88].

61. Quickie selected Thelen (not GT) as its counsel in the Reexamination Proceeding [Mov. Ex. T at 189].

62. Initially, Fell and Colvin would call Sharinn for his thoughts as to aspects of the Reexamination Proceeding [Mov. Ex. T at 106].

63. Hence, and hoping to be more involved, Sharinn opened a client matter at GT for the Reexamination Proceeding [Mov. Ex. Z; see also Mov. Ex. T at 187-89, 191, 239-41].

64. But, it soon became clear that GT would not actually be involved [Mov. Ex. T 94-95, 100-05; 153, 187-89, 191].

65. As Sharinn has explained on his deposition [Mov. Ex. T at 191]:

"At one point they did say that [Sharinn would be involved in the Reexamination Proceeding] and . . . I opened up a matter, and then nothing ever really came of it . . ."

66. Sharinn therefore told Quickie that he understood that Quickie had taken all responsibility as to the '160 Patent away from him, and that he would not do anything further as to it unless GT was actually engaged to do so [Mov. Ex. T at 188-89, 190]:

67. Thus, Sharinn testified on his deposition [Mov. Ex. T at 190]:

"I made clear to them, you fired me, you have new counsel, your new counsel is Thelen Reid & Priest, you

need to take this up with Mark Evens or we can be reengage[d] and then we can deal with this.”

68. Quickie therefore stopped discussing the ‘160 Patent with Sharinn [Mov. Ex. T at 190].

69. GT’s billing records confirm that, showing that GT’s work on the ‘160 Patent completely ceased in March 2003 [Mov. Exs. AR, AM], when Quickie’s formal Revocation/Appointment was filed [see also Mov. Ex. T at 239-45, 266-67].

70. During the Reexamination Proceedings, the PTO sent some papers to the Bryan Cave law firm [Mov. Ex. Y]. Bryan Cave apparently asked Sharinn’s *secretary* if he was supposedly still responsible for the ‘160 Patent [Mov. Ex. Y], so that Bryan Cave could forward the papers to GT. As Sharinn has explained, that was not a conversation with Sharinn himself, but rather an administrative employee [Mov. Ex. T at 144-46]. But, in any event, the conversation was merely to see if Bryan Cave should send the papers to Sharinn for transmittal to Thelen [Mov. Ex. T at 145]. As a result, Bryan Cave did so, and GT did forward the documents to Fell/Quickie the next day, December 3, 2002 [Mov. Ex. AA].

71. The Reexamination Proceeding has resulted in a gutting of the ‘160 Patent. The PTO has rejected and overruled 32 of the 34 claims in the patent, and sustained only 2 of them [Exs. N, AN]. Initially, on April 6, 2004, the PTO issued an office action rejecting all but 3 of the claims in the ‘160 Patent [Mov. Ex. AJ; Mov. Ex. R at 83]. Thereafter, Medtronic sought a further reexamination in June 2004 [Mov. Ex. AL]. On February 25, 2008, the PTO rendered its final decision in the Reexamination Proceeding [Mov. Ex. N]. In its decision, the PTO rejected virtually all of the claims in the ‘160 Patent, and confirmed only 2 of the 34 claims in the patent [Mov. Ex. N at 3; see also Mov. Ex. Q at 186; Mov. Ex. R at 83-86]. On, July 7, 2008, the PTO

issued its “Final Action” confirming its rejection of all but those 2 claims in the ‘160 Patent [Mov. Ex. AS].

Quickie’s Final Replacement of GT with Thelen as to the ‘160 Patent

72. In March 2003, completing the transfer to Thelen of all matters as to the ‘160 Patent, as explained earlier, Quickie filed a formal Revocation/Appointment with the PTO revoking GT’s authority and role as to the ‘160 Patent and designating Thelen as its counsel in GT’s place [Mov. Exs. A, C; Mov. Ex. R at 45, 50-51].

73. Thelen sent a copy of the Revocation/Appointment, as filed, to Quickie [Mov. Ex. AE].

74. The Revocation/Appointment, as detailed above, stated that all prior power and authority of GT as to the ‘160 Patent had been revoked [Mov. Exs. A, C; Mov. Ex. Q at 59-62], and that, in place of GT, Quickie had appointed Thelen (indeed several Thelen attorneys) as its counsel as to the ‘160 Patent [Mov. Exs. A, C; Mov. Ex. Q at 63-64].

75. On April 2, 2003, the PTO therefore sent GT formal Notice of the Revocation/Appointment [Mov. Ex. B; Mov. Ex. T at 242], advising GT:

“The Power of Attorney to you . . . has been revoked . . . as provided by 37 CFR 3.71. Future correspondence will be mailed to the new address of record (37 CFR 1.33).”

76. As corroborated by the copy of the Revocation/Appointment sent to Quickie by Thelen, the “*new address of record*” was, of course, Thelen [Mov. Ex. AE at QLLC 62224]:

“Robert E. Krebs
Thelen Reid & Priest
P.O. Box 640640
San Jose, CA 95164-0640
Telephone (408) 292-5800
Facsimile (408) 287-8040”

[See also Mov. Ex. J. ¶¶2, 4, 5, 6]

77. Sharinn correctly understood that the Notice meant that “there is a new person in charge of this file”, and that he and GT had no further role as to the ‘160 Patent [Mov. Ex. T at 188, 242, 244, 251, 267].

78. Hence, after receiving the PTO’s Notice [Mov. Ex. B], Sharinn sent a letter with a copy of the Notice to Quickie, expressing disappointment but stating [Mov. Ex. AF]:

“[W]e respect [Dr. Colvin’s] decision and will take no further action on this matter. . . [W]e will forward our final bills under separate cover.”

[Accord Mov. Ex. T at 188-89, 242-45, 267; see also Mov. Ex. R at 51-54].

79. As Sharinn testified [Mov. Ex. T at 188 and 189]:

“[M]y understanding was that my powers of attorney and involvement in this case were fully revoked. And when I say this case, I don’t mean the litigation, I mean the ‘160’s existence.

* * *

They had made this abundantly clear to me that that was their intention and that was their desire.”

80. No one from Quickie, including Fell (its General Counsel and Member), told Sharinn that, notwithstanding the Revocation/Appointment and Sharinn’s letter, Quickie would still be looking to GT or Sharinn for further services as to the ‘160 Patent [Mov. Ex. T at 244-45; Mov. Ex. R at 54].

81. Fell admitted on his deposition [Mov. Ex. R at 54]:

“Q. Did you call Mr. Sharinn up and say to him ‘Todd, thanks for sending me this notice, but we’re still going to be looking to you about the ‘160 Patent? Did you ever that conversation with him?

A. I don’t recall.

Q. You don’t recall ever having that conversation, do you?

A. Right.”

[see also Mov. Ex. R at 56; Mov. Ex. I ¶¶22, 23].

82. Sharinn also testified [Mov. Ex. T at 244-45]:

“Q. Did Mr. Fell or Dr. Colvin or anyone else from the Colvin entities or Quickie call you up after that and say to you, oh, no, wait a minute Todd, we’re still looking to you or to Greenberg Traurig to continue work on the ‘160 Patent?

A. No.”

83. Having received the Notice [Ex. B], GT removed the ‘160 Patent from its internal system so as not to interfere with a matter on which its client had retained different counsel, and noted in the system that that patent “has been transferred to another firm” [Mov. Ex. O: “POA revoked” and “transferred to another firm”; Mov. Ex. P: “status: inactive; sub status: transferred”; see also Mov. Ex. S at 20, 28-29, 39, 60-61, 66-68, 71-72, 79-81, 93, 96, 100, 167-69; 172-73, 216-17, 249-50, 289-90; see also 52-53, 62-64, 144-46].

84. I also explained [Mov. Ex. S at 39], as to a printout from GT’s database [Mov. Ex. O]:

“[B]y the records being marked as transferred or inactive . . . there would be no subsequent reports that included those cases because those matters were thereafter being handled by the firm to whom the cases have been transferred.”

and [Mov. S at 79-81]:

“Q. Next column to the right you’ll see that April 2, 2003 date under the column response.. . What does that refer to?

A. That indicates that a response to the due date for the first maintenance fee was taken care of via the revocation of the Power of Attorney and the responsibility for this case. That’s the date of the formal revocation of the Power of Attorney . . . so that we would no longer be responsible for the payment of any maintenance fees.

* * *

[I]f our Power of Attorney is revoked and we’re asked to no longer do anything with respect to, for example, here the ‘160 Patent or anything associated with that ‘160 Patent, we put in that field the date of the formal revocation of our authority to act as attorneys for the client in that regard, and

that's the reason for the entry of 4/2/2003 in each of the M1, M2, and M3, the three maintenance fees there.

That indicates that someone else, this report indicates that the client has asked and instructed someone else to do this activity." (emphasis added)

and [Mov. Ex. S at 172-73]:

"Q. How about notices or reminders that were kicked out from the computerized docketing system?

A. There would be no reminder or notice on the computerized docketing system because our Power of Attorney was revoked well prior to the deadline in May . . . for paying the first maintenance fee.

So there would be no reminder or report . . . We were no longer representing Quickie in that regard. Our power had been revoked. It would have been inappropriate for us to be involved thereafter." (emphasis added)

[Accord: Mov. Ex. S at 250: "Once Thelen assumed responsibility by virtue of our [sic] revocation of our Power of Attorney, we had no responsibility thereafter"; and at 62: reports "were not generated after Greenberg Traurig was notified that its Power of Attorney was going to be revoked and [GT] would no longer represent the client in this regard"; see also 60-61, 66-68, 71-72, 79-81, 93, 96, 100, 167-69; 172-73, 216-17, 249-50, 289-90].

85. Quickie's own later sworn statements and other submissions to the PTO corroborate that Quickie considered GT to have been fully replaced by Thelen and *Thelen* to be *solely* responsible after March 2003 for the '160 Patent, including "*timely payment of the maintenance fees*" [Mov. Exs. E, F, G].

86. Thelen's conduct was consistent with those statements. Thus, in December 2003, Thereafter, Thelen filed a 'change of address notice' as to the '160 Patent [Mov. Ex. C; see also Mov. Ex. AO ¶¶15].

87. GT's time and billing records also corroborate that, showing GT did indeed cease all work on the '160 Patent after receiving the Revocation/Appointment [Mov. Exs. AR, AM].

88. While GT continued to complete the successful prosecution of another *different* patent [*Id.*; Mov. Exs. AG, AH, AI, AK], GT had no further role, and did no further work on or as to the '160 Patent [*Id.*; see also Mov. Ex. T at 244-45, 266-67].

89. Ironically but unfortunately, if Quickie had not revoked GT's authority, the '160 Patent would have remained active in GT's system and would have alerted GT that the Maintenance Fee was becoming due [Mov. Ex. S at 49, 52-53, 144-46]. GT either would have advised Quickie or paid the Fee itself as a disbursement [Mov. Ex. S at 114-15, 144-46].

90. But, as Sharinn explained [Mov. Ex. T at 250-51]: "I've always understood it, and as someone who has filed them with regards to others, means that those others are no longer permitted to participate in the prosecution or the maintenance of the referenced patent." That is also consistent with my understanding and experience.

Thelen's Failure as to the Maintenance Fee and the Loss of the '160 Patent

91. Coincidentally, before joining GT, I was a senior patent counsel at Thelen [Mov. Ex. S at 20-21].

92. While I was at Thelen, I had set up an internal system for tracking the patents as to which Thelen had responsibility[[Mov. Ex. S at 20-21, see also 88-89, 117-18, 121-22].

93. The materials and documents which GT sent to Thelen (both when Thelen first became involved and after Thelen replaced GT) showed when the Maintenance Fee on the '160 Patent would become due [Mov. Ex. S at 123-24, 128-29, 136-37, see also 212, 217-18, 309; Mov. Ex. T at 198-202; see also Mov. Exs. W, X; Mov. Ex. R at 63-64; Mov. Ex. I ¶¶22, 23].

94. Thelen thus had an opportunity, indeed ample opportunity --- *both* when the Maintenance Fee first became payable *and* during the entire one-year period when it could be

paid --- to pay the Maintenance Fee or to advise Quickie to do so and thus avoid loss of the '160 Patent [Mov. Ex. R at 96-97; Mov. Ex. AO ¶19].

95. For unexplained reasons, Thelen failed to do either, resulting in the expiration of the '160 Patent [Mov. Ex. AO ¶19; see also Mov. Exs. E, F, G, L, M].

96. Thelen was aware of its responsibility as to the '160 Patent [Mov. Ex. AE].

97. Thelen itself had prepared and filed the Revocation/Appointment in March 2003 [Mov. Ex. Q at 66; Mov. Ex. AO ¶14; see also Mov. Ex. AE].

98. Moreover, Evens later confirmed that Thelen had been responsible for payment of the Maintenance Fee [Mov. Ex. K]. In an email to another Thelen partner in October 2006, after Evens had left Thelen, Evens acknowledged [Mov. Ex. K]:

“[M]y understanding at the time was that we (TRP) was [sic] taking responsibility for the patent, and that is how I read Bob’s [Krebs’] filing [of the Revocation/Appointment]. Second, I remember a conversation early on with Bob about not missing fee deadlines. Finally, maintenance fees are part of representing the patent, so I am surprised that Bob, as a practiced patent prosecutor, wouldn’t advise [sic] Quickie and Steve that deadlines were approaching so he would not lose his patent.”
(emphasis added)

99. Quickie has said the same thing [Mov. Ex. E at 4]:

“The Patent Owner fully believed that their valuable legal rights in the '160 patent would be justly protected by the attorneys and law firm of Thelen Reid & Priest, when the Patent Owner chose them for representation and executed the Power of Attorney on March 4, 2003 [Mov. Ex. a]. Unfortunately, such did not occur. . .”

Accord: Mov. Exs. G and F: Quickie “retained Robert E. Krebs et al of . . . Thelen . . . [for] . . . *including timely payment of the maintenance fee*”. Sharinn also so testified [Mov. Ex. T at 188, 242, 245, 250-52, 266-67].

100. The failure to pay the Maintenance Fee during the one-year period from May 23, 2003 through May 23, 2004 resulted in the loss of the '160 Patent [Mov. Exs. L, M; AO ¶19].

Quickie's Unsuccessful Petition to Revive the '160 Patent

101. After the learning of the loss of its '160 Patent in 2006, Quickie fired Thelen [Mov. Ex. AN; Mov. Ex. R at 101; Mov. Ex. Q at 75-77].

102. Quickie (through its new counsel) then filed a Petition to revive the patent pursuant to 37 CFR §1.378(b) [Mov. Exs. E, F,G; Mov. Ex. Q at 44-48, 77-102; see also Mov. Ex. R at 65-71, 74-75, 78-81], claiming (as detailed above) that it had relied on Thelen to assure that the Maintenance Fee was paid but that Thelen had failed to do so [*Id.*].

103. To support its Petition, Quickie expressly requested and received a Statement from Sharinn corroborating its own statements that GT and he had been replaced by Thelen and had no responsibility as to the '160 Patent after March 4, 2003 [Mov. Ex. T at 254, see also 253-64].

104. Quickie's counsel (who had initially drafted the Sharinn Statement [Mov. Ex. T at 254-56]) submitted Sharinn's Statement as proof corroborating that Thelen had had sole responsibility for the Maintenance Fee and for the loss of the '160 Patent [Mov. Exs. E and F]. Quickie has never requested a contrary statement from Sharinn [Mov. Ex. Q at 90; Mov. Ex. T at 256].

105. Nor has Quickie ever advised the PTO that its prior statements to the PTO blaming Thelen alone --- including that Thelen had had sole responsibility for payment of the Maintenance Fee --- were false or inaccurate [Mov. Ex. Q at 89, 90, 96, 97, 99, 100, 102; Mov. Ex. R at 74-75, 80-81; Mov. Ex. T at 256].

106. The PTO denied Quickie's Petition on March 6, 2007 [Mov. Ex. L; Mov. Ex. R at 81; Mov. Ex. Q at 121].

107. In denying the Petition, the PTO expressly noted and relied on Quickie's statements to the PTO that Thelen "was responsible for payment of the maintenance fee" and that Sharinn and GT had not been "responsible for the patent" after March 2003 [Mov. Ex. L at 4].

108. Quickie filed a petition for reconsideration of that decision [Mov. Ex. R at 81; Mov. Ex. Q at 103-105].

109. On October 5, 2007, the PTO also denied that petition [Mov. Ex. M; Mov. Ex. Q at 102-04; Mov. Ex. R at 81].

110. In denying the petition for reconsideration, the PTO again referenced Quickie's prior statements and held that Quickie remained bound by them, including the Sharinn Statement which Quickie had sought and filed and which it had left extant [Mov. Ex. M at 3-4; Mov. Ex. Q at 107-09]. Quickie has not sought a further review of that decision [Mov. Ex. Q at 123-24].

RESPONDING TO QUICKIE'S APPARENT CONTENTIONS

111. Sharinn, a former professional athlete and college coach [Mov. Ex. T at 16-17], correctly summed up the situation in sports vernacular [Mov. Ex. T at 103-04]:

"So, if I seem a bit upset about it, it's because I've been accused of messing up where I did not mess up and . . . my former firm [GT] is being accused of me messing up where they did not mess up. We didn't have the ball to run with. It was taken away from us and handed to a different back, to speak metaphorically. . . We were pulled out of the game."

112. Quickie appears to be contending that GT is nevertheless responsible based on unrelated matters, events predating Quickie's discharge and replacement of GT and mischaracterizations of the facts.

GT's work on another different patent

113. Quickie contends that, since GT briefly continued to represent Quickie in the prosecution of another different patent, Patent No. 6,716,243 ["the '243 Patent"; see Mov. Ex. T

at 271], GT should be held liable for not reminding Quickie that the Maintenance Fee on the '160 Patent would become payable after GT had been relieved of all responsibility as to that patent. That, of course, is directly contrary to what Quickie *swore* to the PTO (and has left extant) --- and to what GT had been told and relied on.

the fall 2002 change of address

114. In discovery, Quickie has pointed out that GT filed a change of address with the PTO (signed in October 2002 but filed in December 2002) advising the '160 Patent that Sharinn's office had moved from GT's 200 Park Avenue office to its office at 885 Third Avenue [Mov. Ex. AB; Mov. Ex. S at 192].

115. However, as Sharinn and I have explained, that was done administratively as a matter of course since GT then still had an extant power of attorney as to the '160 Patent, [Mov. Ex. AB; Mov. Ex. S at 196-98; Mov. Ex. T at 135-36].

116. In any event, that *predated* Quickie's March 2003 Revocation/Appointment replacing GT with Thelen [Mov. Exs. A, B, C, AE, AF; Mov. Ex. S at 196-97]. The change of address, of course, became moot and irrelevant when Quickie filed the Revocation/Appointment [*Id.*].

the Pepe 2000 letter

117. Quickie may also seek to rely on Pepe's statement in 2000 (when the '160 Patent was issued) that "*we* will notify you regarding payment of the Maintenance Fees several months before they are due" (emphasis added) [Mov. Ex. U at 2].

118. As I explained above, GT made no such undertaking as to the '160 Patent; but GT did place the '160 Patent into its internal database to follow.

119. However, Quickie *thereafter* revoked GT's authority and role as to the '160 Patent, and replaced GT with Thelen as Quickie's patent counsel as to the '160 Patent, indeed months *before* the Maintenance Fee became due.

120. Hence, GT had appropriately ceased work as to '160 Patent in March 2003, and properly noted (in its internal notification system) that the matter had been transferred to another law firm, so that GT was no longer involved.

Sharinn's relationship with Colvin and Fell

121. Sharinn left GT in 2005; and he admitted, GT had no involvement whatever with Quickie after that [Mov. Ex. T at 18; see also Mov. Ex. S at 34-46].

122. Sharinn continued to talk with Fell and Colvin after GT had been relieved [e.g. Mov. Ex. T at 108-11, 219], since they had developed a personal friendship while he had been counsel for Quickie [Mov. Ex. T at 108-10].

123. But, Sharinn was never again engaged as their counsel [Mov. Ex. T at 96, 101, 105, 153]; and, as Sharinn has explained, such discussions were not in the context of a lawyer-client relationship, much less as to the '160 Patent [cf. Mov. Ex. T at 244-45; Mov. Ex. R at 54].

124. To the contrary, Colvin and Fell had made clear that he had been "relieved of all duties" as to the '160 Patent [Mov. Ex. T at 189]; and Sharinn had told them [*Id.*]:

"I made clear to them you fired me, you have new counsel, your new counsel is Thelen Reid & Priest, you need to take this up with Mark Evens or we can be reengage[d] . . ."

client intake forms

125. Quickie spent extended time in discovery as to the GT client intake forms that Sharinn's secretary filled out in the fall and early winter of 2002.

126. All of those forms *predate* the Revocation/Appointment in March 2003.

127. Moreover, Sharinn has explained that he and she “opened” possible matters because “I had always hoped in the back of my mind and in my heart” to get Quickie back as a client and to “put forth the best foot I could forward for making partner at Greenberg Traurig”[Mov. Ex. T at 110, see also 108-10].

misaddressed correspondence

128. Quickie also pointed to correspondence from or to Sharinn in the fall and winter of 2002-03 which was addressed to Quickie or referred to it on the ‘re’ line [see, e.g., Mov. Ex. T at 203-10; see also Mov. Exs. AA and AG; see also Mov. Exs. AA and AG].

129. That correspondence predates Quickie’s March 2003 Revocation/Appointment as to the ‘160 Patent.

130. Moreover, as the evidence and testimony showed, the parties often misaddressed the entity as to which letters were sent and misidentified the matter about which they were communicating [Mov. Ex. R at 91-95; Mov. Ex. T at 230-36; Mov. Exs. AA and AG]. Sharinn, Fell and Quickie sometimes simply referred to matters or addressed them to Quickie as a shorthand [Mov. Ex. T at 209-11]. Fell thus relied on the body of the correspondence to determine what the communication was really about [Mov. Ex. R at 94-95]. Those parties did not pay strict attention to such matters, and these aberrant examples are not worthy of significance [Mov. Ex. R at 95].

AS TO THE STATUTE OF LIMITATIONS

131. As explained above, Quickie discharged GT and replaced it with Thelen as to the ‘160 Patent in March 2003; and, as corroborated by GT’s billing records, GT did no further work as to the ‘160 Patent after that [Mov. Ex. AR, AM].

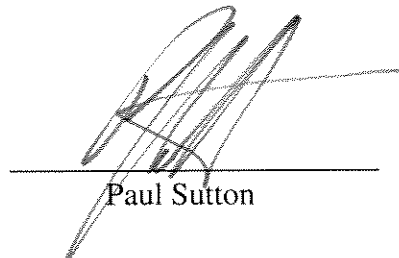
132. This action was not commenced until mid-April 2007, more than four years later. As a result, Quickie's claim is barred by the statute of limitations.

133. There was no "mutual understanding" for GT to continue doing anything as to the '160 Patent after Quickie's revocation of GT's authority as to the '160 Patent and appointment of new counsel (i.e. Thelen) as to the '160 Patent in March 2003 [Mov. Exs. A, B and C].

134. Rather, as confirmed in Quickie's later sworn statements in support of Quickie's petition to revive the patent [Mov. Exs. E, F and G], Quickie was no longer looking to GT as to the '160 Patent or the Maintenance Fee that would become due on it.

135. Sharinn (of GT) had also been told that by Quickie and its General Counsel; and he had confirmed that in his May 15, 2003 letter [Mov. Ex. AF]; and GT's billing records show that GT did no other work on '160 Patent after that [Mov. Ex. AR, AM].

Dated: July 22, 2008
New York, New York



Paul Sutton

EXHIBIT LIST

Quickie LLC v. Greenberg Traurig LLP
07 Civ. 10331 (RMB) (DFE)

July 22 , 2008

LIST OF MOVING EXHIBITS
ON MOTION FOR SUMMARY JUDGMENT

Moving Exhibit. A	Quickie's Revocation of Prior Powers of Attorney/New Power of Attorney dated March 4, 2003 filed in March 2003 [part of Dep. Ex. 51]
Moving Exhibit B	PTO Notice of Change of Power of Attorney dated April 2, 2003 received by Greenberg Traurig [Dep. Ex. 50]
Moving Exhibit C	Thelen Change of Address filed in December 2003 [Dep. Ex. 57]
Moving Exhibit D	Petition by Quickie to revive '160 Patent [Dep. Ex. 55]
Moving Exhibit E	Supplement to Quickie's Petition to revive '160 Patent [Dep. Ex. 54]
Moving Exhibit F	Statement of Aubrey Galloway in Support of Quickie's Petition to revive '160 Patent [Dep. Ex. 53]
Moving Exhibit G	Statement of Todd Sharinn in Support of Quickie's Petition to revive '160 Patent [Dep. Ex. 52]
Moving Exhibit H	Quickie's Response to GT's Request for Admissions
Moving Exhibit I	Fell/Rick Steiner Response to GT's Request for Admissions [Dep. Ex. 65]
Moving Exhibit J	Thelen/Krebs Response to GT's Request for Admissions
Moving Exhibit K	Evens email to Thelen of October 25, 2006 [Dep. Ex. 62]
Moving Exhibit L	PTO Decision of March 6, 2007 [Dep. Ex. 59]
Moving Exhibit M	PTO Decision of October 5, 2007 [Dep. Ex. 60]
Moving Exhibit N	PTO Decision of February 20, 2008 [Dep. Ex. 63]

Moving Exhibit O	Print-Out from GT internal computer docketing system for '160 Patent [Dep. Ex. 3]
Moving Exhibit P	Print-Out from other GT internal computer docketing system for '160 Patent [Dep. Ex. 8]
Moving Exhibit Q	Galloway (Quickie) Deposition Excerpts
Moving Exhibit R	Fell (Rick Steiner) Deposition Excerpts
Moving Exhibit S	Sutton (GT) Deposition Excerpts
Moving Exhibit T	Sharinn Deposition Excerpts
Moving Exhibit U	Pepe & Hazard letter to Quickie of May 30, 2000 [Dep. Ex. 21]
Moving Exhibit V	GT letter to Thelen of April 11, 2002 [Dep. Ex. 5]
Moving Exhibit W	Fell letter to Sharinn of October 15, 2002 [Dep. Ex. 22]
Moving Exhibit X	GT letter to Thelen of October 16, 2002 [part of Dep. Ex. 25]
Moving Exhibit Y	Email to Sharinn dated December 2, 2002 [Dep. Ex. 37]
Moving Exhibit Z	GT Client Intake Form of December 5, 2002 [Dep. Ex. 19]
Moving Exhibit AA	GT letter to Fell dated December 3, 2002 [Dep. Ex. 66]
Moving Exhibit AB	Change of Correspondence Address of October 22, 2002 filed with PTO by GT in December 2002 [Dep. Ex. 7]
Moving Exhibit AC	GT letter to Quickie of January 29, 2003 re other patent [Dep. Ex. 39]
Moving Exhibit AD	GT letter to Quickie of February 21, 2003 re other patent [Dep. Ex. 40]
Moving Exhibit AE	Thelen letter to Quickie dated April 16, 2003 [Dep. Ex. 51]
Moving Exhibit AF	GT letter to Quickie dated May 15, 2003 [Dep. Ex. 27] with copy of Notice to GT of revocation
Moving Exhibit AG	GT letter to QuickieVision dated October 14, 2003 [Dep. Ex. 67]

Moving Exhibit AH	GT letter to Quickie dated December 2, 2003 re '243 Patent [Dep. Ex. 41]
Moving Exhibit AI	GT letter to Fell of December 2, 2003 [Dep. Ex. 44]
Moving Exhibit AJ	Thelen letter to Court in Medtronic Action of April 6, 2004 with PTO initial decision in reexamination proceeding re '160 Patent
Moving Exhibit AK	GT letter to Quickie dated April 13, 2004 [Dep. Ex. 33]
Moving Exhibit AL	Medtronic Request for Reexamination '160 Patent of June 16, 2004
Moving Exhibit AM	GT letter to Quickie of September 23, 2004 re outstanding invoices [Dep. Ex. 36]
Moving Exhibit AN	Quickie letter to Thelen of August 14, 2006 for transfer of files to Evens' new law firm [Dep. Ex. 58]
Moving Exhibit AO	Quickie's Complaint
Moving Exhibit AP	GT's Answer
Moving Exhibit AQ	Thelen's file index for '160 Patent
Moving Exhibit AR	GT billing '160 Patent [Dep. Ex. 45, 48 and 49 and part of 42]
Moving Exhibit AS	Final Action of PTO as to '160 Patent dated July 7, 2008

EXHIBIT A

PATENT

Practitioner's Docket No. 034521-002

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Patent No: 6,066,160

Issued: May 23, 2000

Title: PASSIVE KNOTLESS SUTURE TERMINATOR FOR USE IN
MINIMALLY INVASIVE SURGERY AND TO FACILITATE
STANDARD TISSUE SECURING

Inventors: Stephen Colvin, Eugene Grossi, Allan Katz, Paul Oddo

Commissioner of Patents and Trademarks
Washington, D.C. 20231

POWER OF ATTORNEY BY ASSIGNEE OF ENTIRE INTEREST
(REVOCATION OF PRIOR POWERS)

As assignee of record of the entire interest of the above identified patent,

REVOCATION OF PRIOR POWERS OF ATTORNEY

all powers of attorney previously given are hereby revoked and

NEW POWER OF ATTORNEY

the following attorney(s) and/or agent(s) are hereby appointed to prosecute and
transact all business in the Patent and Trademark Office connected therewith.

Robert E. Krebs, Registration No. 25,885; David B. Ritchie, Registration No. 31,562; Marc S.
Hanish, Registration No. 42,626; John P. Schaub, Registration No. 42,125; Adrienne
Yeung, Registration No. 44,000; Steven J. Robbins, Registration No. 40,299; Thierry K. Lo,
Registration No. 49,097; William Samuel Niece, Registration No.: 47,824; J. Davis Gilmer,
Registration No. 44,711; William E. Winters, Registration No. 42,232; Masako Ando, (37
C.F.R. §10.9 (b)); and John Klaas Uilkema, Registration No. 20,282; Becky L. Troutman,
Registration No. 36,703; Hal J. Bohner, Registration No. 27,856;

QUICK 005088

QLLC 0062222

Quickie, LLC

(type or print name of assignor of entire interest)

3 New York Plaza
Attn: Alan Fell
New York, NY 10004

Address

Recorded in PTO on 11/23/1998
Reel 9608
Frame 0640

ASSIGNEE STATEMENT

The undersigned states that he is authorized to act on behalf of the assignee.

Date 3/4/03

Aubrey C. Gallouay
Signature

Aubrey C. Gallouay
(type or print name of person authorized to sign
on behalf of assignee)

Managing Partner
Title

QUICK 005089

QLLC 0062223

Attorney Docket No. 034521-003

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: Stephen Colvin, Eugene Grossi, Allan Katz, Paul Oddo
PATENT NO.: 6,066,160
ISSUE DATE: May 23, 2000
TITLE: PASSIVE KNOTLESS SUTURE TERMINATOR FOR USE IN
MINIMALLY INVASIVE SURGERY AND TO FACILITATE
STANDARD TISSUE SECURING
EXAMINER: Woo, J.
ART UNIT: 3731

CERTIFICATE OF MAILING

I hereby certify that this paper is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Commissioner for Patents, Washington, DC 20231, on the date printed below:

Date: 3/20/03

Name: Annette Valdivia
Annette Valdivia

COMMISSIONER FOR PATENTS
WASHINGTON, D.C. 20231

CHANGE OF ATTORNEY DOCKET NUMBER
AND CHANGE OF ADDRESS NOTICE

Please change the Attorney Docket No. for this patent application from
034521-002 to 034521-003.

Please address all further communications regarding this application to:

Robert E. Krebs
Thelen Reid & Priest LLP
P.O. Box 640640
San Jose, CA 95164-0640
Telephone (408) 292-5800; Facsimile (408) 287-8040

Respectfully submitted,
THELEN REID & PRIEST LLP

Dated: 20 March, 2003

Hal Jay Bohrer
Hal Jay Bohrer
Reg. No. 27,856

QUICK 005090

QLLC 0062224

EXHIBIT B

EXHIBIT

50

Page 1 of 1

Commissioner for Patents
Washington, DC 20231
www.uspto.gov

APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
09/198,087	11/23/1998	STEPHEN COLVIN	QUIC-1

Todd S. Sharinn
Greenburg Traurig LLP
885 Third Avenue 21st Floor
New York, NY 10022

CONFIRMATION NO. 2082



OC000000009757041

Date Mailed: 04/02/2003

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 04/02/2003.

- The Power of Attorney to you in this application has been revoked by the assignee who has intervened as provided by 37 CFR 3.71. Future correspondence will be mailed to the new address of record(37 CFR 1.33).

DAVID O LIPSCOMB
OPR (703) 308-7127

FORMER ATTORNEY/AGENT COPY

GT 0000373

EXHIBIT C

12-05-03 11:47am From:Thelen, Reid, & Priest LLP

T-198 P 001/002 F-254
Thelen Reid & Priest LLP
Attorneys At Law225 West Santa Clara Street, Suite 1200
San Jose, CA 95113-1723
Tel. 408.292.5800
Fax 408.287.8040
www.thelenreid.com

F A X C O V E R P A G E

Date: December 5, 2003

Total Pages: 2
(including cover)RECEIVED
CENTRAL FAX CENTER

DEC 05 2003

To: Commissioner for Patents
USPTOFax: 703.872.9306
Phone:

OFFICIAL

From: Annette Valdivia

Fax:
Phone: 408/282-1818
E-Mail: avaldivia@thelenreid.com

CERTIFICATE OF TRANSMISSION UNDER 37 CFR 1.8

I hereby certify that this correspondence is being facsimile transmitted with the United States Patent and Trademark Office to
Director for Patents, Fax No. (703) 872-9306 on the date printed below.

Date: 12/5/03

Signature: Annette Valdivia

Annette Valdivia

RE: Control No. 90/006,460
Filed: November 25, 2002
Docket No: 034521-003

Dear Sir or Madam:

Respectfully submitted is the following:

1. Change of attorney docket number and change of address notice

If you have any questions, please do not hesitate to contact us.

Regards,
Annette Valdivia

In case of a problem with this transmission, please call the Fax Operator at 408.282.1866

JOB #	ATTORNEY #	CLIENT-MATTER #	RETURN TO	ROOM #
	40935	034521-003		

IMPORTANT: This fax transmission is intended only for the addressee. It contains information from the law firm of Thelen Reid & Priest LLP which may be privileged, confidential and exempt from disclosure under applicable law. Dissemination, distribution, or copying of this by anyone other than the addressee or the addressee's agent is strictly prohibited. If this transmission is received in error, please notify Thelen Reid & Priest LLP immediately at the telephone number indicated above. We will reimburse your costs incurred in connection with this erroneous transmission and your return of these materials. THANK YOU.

SV #150477 v1

12-05-03 11:47am From:Thelen, Reid, & Priest LLP

T-188 P.002/002 F-254

Attorney Docket No. 034521-003

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: Stephen Colvin, Eugene Grossi, Allan Katz, Paul Oddo

CONTROL NO.: 90/006,460

PATENT NO.: 6,066,160

FILING DATE: November 25, 2002

TITLE: PASSIVE KNOTLESS SUTURE TERMINATOR FOR USE IN MINIMALLY INVASIVE SURGERY AND TO FACILITATE STANDARD TISSUE SECURING

EXAMINER: Woo, J.

ART UNIT: 3731

RECEIVED
CENTRAL FAX CENTER

DEC 05 2003

OFFICIAL

CERTIFICATE OF TRANSMISSION UNDER 37 CFR 1.8

I hereby certify that this correspondence is being facsimile transmitted with the United States Patent and Trademark Office to Director for Patents, Fax No. (703) 872-9306 on the date printed below:

Date: 12/5/03

Name:

Annette Valdivia

COMMISSIONER FOR PATENTS
WASHINGTON, D.C. 20231

CHANGE OF ATTORNEY DOCKET NUMBER
AND CHANGE OF ADDRESS NOTICE

Please change the Attorney Docket No. for this patent application to 034521-003.

Please address all further communications regarding this application to:

Robert E. Krebs
Thelen Reid & Priest LLP
P.O. Box 640640
San Jose, CA 95164-0640

Telephone (408) 292-5800; Facsimile (408) 287-8040

Respectfully submitted,

THELEN REID & PRIEST LLP

Robert E. Krebs

Reg. No. 25,885

Dated:

12/2/03

EXHIBIT D



PTO/SB/55 (10-05)

Approved for use through 04/30/2009. OMB 0651-0018

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

**PETITION TO ACCEPT UNAVOIDABLY DELAYED PAYMENT OF
MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(b))**

Docket Number (Optional)

Quicke-001-PT

Mail to: Mail Stop Petition

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Fax: (571) 273-8300

EXHIBIT

55

6-12-08

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (571) 272-3282.

Patent No. 6,066,160 Application Number 09/198,087Issue Date May 23, 2000 Filing Date November 23, 1998

CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number (or reissue patent number, if a reissue) and (2) the application number of the actual U.S. application (or reissue application) leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).

Also complete the following information, if applicable

The above-identified patent:

- ☐ Is a reissue of original Patent No. _____ original issue date _____;
original application number _____,
original filing date _____.
- ☐ resulted from the entry into the U.S. under 35 U.S.C. 371 of international
application _____ filed on _____.

CERTIFICATE OF MAILING OR TRANSMISSION (37 CFR 1.8(a))

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is

(1) being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 OR

(2) transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (571) 273-8300.

Date

Signature

10/30/2006 SLUAME1 00000001 6066160

01 FC:1599

1600.00 DP

Typed or printed name of person signing Certificate

[Page 1 of 4]

This collection of information is required by 37 CFR 1.378(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 8 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

BEST AVAILABLE COPY



PTO/SB/65 (10-05)

Approved for use through 04/30/2008. OMB 0651-0018

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

1. SMALL ENTITY

☐ Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27.

2. LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS

☐ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g).

3. MAINTENANCE FEE (37 CFR 1.20(e)-(g))

The appropriate maintenance fee must be submitted with this petition, unless it was paid earlier.

NOT Small Entity			Small Entity		
Amount	Fee	(Code)	Amount	Fee	(Code)
<input checked="" type="checkbox"/> \$ 900.00	3 1/2 yr fee	(1551)	<input type="checkbox"/> \$ _____	3 1/2 yr fee	(2551)
<input type="checkbox"/> \$ _____	7 1/2 yr fee	(1552)	<input type="checkbox"/> \$ _____	7 1/2 yr fee	(2552)
<input type="checkbox"/> \$ _____	11 1/2 yr fee	(1553)	<input type="checkbox"/> \$ _____	11 1/2 yr fee	(2553)

MAINTENANCE FEE BEING SUBMITTED \$ _____

4. SURCHARGE

The surcharge required by 37 CFR 1.20(i)(1) of \$ 700.00 (Fee Code 1557) must be paid as a condition of accepting unavoidably delayed payment of the maintenance fee.SURCHARGE FEE BEING SUBMITTED \$ 700.00

5. MANNER OF PAYMENT

☐ Enclosed is a check for the sum of \$ _____

☐ Please charge Deposit Account No. _____ the sum of \$ _____. A duplicate copy of this authorization is attached.

☒ Payment by credit card. Form PTO-2038 is attached.

6. AUTHORIZATION TO CHARGE ANY FEE DEFICIENCY

☒ The Director is hereby authorized to charge any maintenance fee, surcharge or petition fee deficiency to Deposit Account No. _____. A duplicate copy of this authorization is attached.

PTO/SB/85 (10-05)

Approved for use through 04/30/2008. OMB 0651-0016

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

7. OVERPAYMENT

As to any overpayment made please

☒ Credit to Deposit Account No. _____

OR

☐ Send refund check.


WARNING:

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

8. SHOWING

The enclosed statement will show that the delay in timely payment of the maintenance fee was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that this petition is being filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent. The statement must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which the patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly.

9. PETITIONER(S) REQUESTS THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED.

<u></u>	<u>10/27/06</u>
Signature(s) of Petitioner(s)	Date
<u>Timothy J. Maier</u>	<u>51,986</u>
Typed or printed name(s)	Registration Number, if applicable
<u>128 N. P.H. St. 2ND Floor</u>	<u>703 740-8322</u>
Address	Telephone Number
<u>Alexandria, VA 22314</u>	
Address	

ENCLOSURES:

- ☒ Maintenance Fee payment
- ☒ Statement why maintenance fee was not paid timely
- ☒ Surcharge under 37 CFR 1.20(f)(1) (fee for filing the maintenance fee petition)
- ☐ Other:

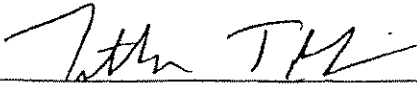
PTO/SB/65 (10-05)

Approved for use through 04/30/2009. OMB 0651-0016

U.S. Patent and Trademark Office, U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."



Signature

10/27/06

Date

Timothy J. Maier

Typed or printed name

51,986

Registration Number, if applicable

STATEMENT

(In the space below, please provide the showing of unavoidable delay recited in paragraph 8 above.)

See Attached.

(Please attach additional sheets if additional space is needed)



PATENT
Customer No.62008
Attorney Docket No. QUICKIE-001-PT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent of:)
)
Colvin et al.) Group Art Unit: NA
)
US Patent No.: 6,066,160) Examiner: Gary Jackson
)
Issue Date: May 23, 2000)
)
For: Passive knotless suture terminator)
for use in minimally invasive surgery and)
to facilitate standard tissue securing)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

GRANT OF LIMITED POWER OF ATTORNEY

TO FILE 37 C.F.R. 378(C) PETITION

The undersigned representative of Quickie, LLC, owner by virtue of assignment of the above-identified application, hereby grants limited power of attorney in the above action to Maier & Maier, PLLC., Customer Number 62,008, Timothy J. Maier, Reg. No. 51,986; Christopher J. Maier, Reg. No. 53,255; both jointly and separately as their attorneys with full power of substitution and revocation to file and prosecute this, the above-reference petition, in the Patent and Trademark Office.

Attorney Docket No. Quickie-001-PT
Patent No.: 6,066,160

Please send all future correspondence concerning this Petition to Maier & Maier,
PLLC at the following address:

Maier & Maier, PLLC
128 N. Pitt St.
2nd Floor
Alexandria, VA 22314

The undersigned is empowered with limited Power of Attorney on
behalf of the assignee.

Dated: 10/25/06

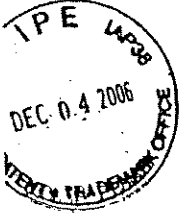
Title: Mary Parton

Quickie, LLC

By: Aubrey Galloway M.D.

Aubrey C. Galloway, MD

EXHIBIT E



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Colvin *et al.*

Appl. No. 09/198,087

For: Passive Knotless Suture
Terminator For Use in Minimally
Invasive Surgery and to Facilitate
Standard Tissue Securing

U.S. Patent No.: 6,066,160

Owner: Quickie L.L.C.

Filed: November 23, 1998

Issued: May 23, 2000

Art Unit: 3731

Supplement to Petition Under 37 C.F.R. § 1.378(b)

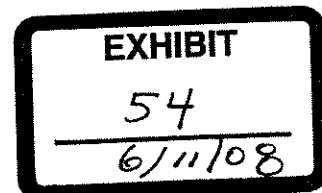
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Sir:

The above-referenced patent expired for delayed payment of the first maintenance fee.

This supplement is filed to further show to the satisfaction of the Commissioner that the delay in payment of the first maintenance fee has been unavoidable to the Patent Owner, and that reasonable care was taken by the Patent Owner to insure that timely payment of the maintenance fee would be made.

A Declaration by Todd S. Sharinn, Esq., is being added to Exhibit 7 showing that he was an attorney at Pepe & Hazard, LLP, and was responsible for the '160 patent. Later, he left Pepe & Hazard, but continued to be responsible for the '160 patent as an attorney at Greenberg Traurig, LLP (Exhibit 8). Further, his responsibility for the '160 patent ended prior to the time period when the payment of a first maintenance fee was due. (See Exhibits 3 and 10, Revocation of Prior Powers of Attorney signed on the behalf of the Patent Owner, on March 4, 2003).



- 2 -

Colvin *et al.*
Appl. No. 09/198,087

Also, a response from counsel for Greenberg Traurig, LLP, and associated documentation is being added to Exhibit 8 showing the transfer of responsibility from Pepe & Hazard, and Todd Sharrin, to Greenberg Traurig.

Further, new Exhibit 13 is added to provide relevant MPEP sections on filing amendments in a reexamination proceeding on an expired patent, and new Exhibit 14 is added showing that Robert E. Krebs of Thelen, Reid & Priest did errantly twice amend the original claims of the '160 patent during merged reexamination proceedings.

Furthermore, the only response received from Thelen, Reid & Priest is being added to Exhibit 10. This response includes an engagement letter for representation of the Patent Owner, dated July 3, 2001 for litigation services related to the Patent Owner's legal action against Medtronic, Inc.. The response also includes: an index for patent prosecution files sent on September 28, 2006; a file transfer letter and index dated October 6, 2006; and a file transfer letter dated November 1, 2006; all of which were sent to Sterne, Kessler, Goldstein & Fox, PLLC. Additionally, the response contains a letter dated August 14, 2006 from Aubrey Galloway instructing Thelen, Reid & Priest to transfer responsibility for all matters relating to the Patent Owner to Sterne, Kessler, Goldstein & Fox. Thelen, Reid & Priest's response does not mention their responsibility to pay maintenance fees and does not include a copy of their docket records for the '160 patent maintenance fee payment.

Thelen, Reid & Priest was granted and held sole and full power in the '160 patent from March 4, 2003 through August 14, 2006 (Exhibits 3, 9 and 10). This period of time covered the time period up until May 23, 2004 for timely paying the first maintenance fee, and the entire two-year time period, starting from the date of the '160 patent's

expiration, to file a remedial Petition under the unintentional provision (37 CFR 1.378(c)); this two-year expiration period ending on May 24, 2006.

The actions and inactions of Thelen, Reid & Priest, Medtronic's Reexamination Requests, and even the USPTO, led the Patent Owner to believe that their '160 patent was viable. Not until July 23, 2006 did the Patent Owner first learn that their valuable '160 patent had expired.

Thelen, Reid & Priest erred by preparing and filing amendments to claims of the '160 patent in merged Reexamination Nos. 90/006460 & 90/007085 (Exhibit 14). The USPTO erred in accepting the January 11 and June 20, 2005 amendments to the claims of the '160 patent (See Exhibit 13). If the USPTO had properly dismissed the claim amendments, pursuant to MPEP 2250-III & 2234 (Exhibit 13), the Patent Owner would have been notified and made aware of the '160 patent's expiration, and under the unintentional provision, timely taken the proper remedial action well before the May 24, 2006 deadline date to reinstate the '160 patent. Thelen, Reid & Priest failed to discover and know that the '160 patent had expired when they prepared and filed amendments to the claims in reexamination (See Exhibit 14). It also appears that Thelen, Reid & Priest failed to docket the patent for payment of maintenance fees.

No such opportunity to be made aware of the '160 patent expiration was timely afforded to the Patent Owner and, thus, the failure to reinstate the '160 patent by May 24, 2006 was clearly unavoidable to the Patent Owner.

As to the "reasonable care" burden of the Patent Owner under 37 CFR 1.378(b), we submit that the Patent Owner fully executed such by continuously taking due care to acquire reputable and reliable legal services of law firms and attorneys to be fully responsible for, and fully represent their legal rights in, all post-issuance matters

- 4 -

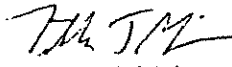
Colvin *et al.*
Appl. No. 09/198,087

concerning their valuable '160 patent property; which included litigation and Reexamination Proceedings conducted by the firm of Thelen, Reid & Priest.

The Patent Owner fully believed that their valuable legal rights in the '160 patent would be justly protected by the attorneys and law firm of Thelen, Reid & Priest, when the Patent Owner chose them for representation and executed the Power of Attorney dated March 4, 2003 (See Exhibit 9). Unfortunately, such did not occur and the Patent Owner was shocked to learn from another party on July 23, 2006 that their '160 patent had expired, which gravely prejudiced post-issuance litigation proceedings and negotiations.

This Supplement has been prepared and is filed with due care of the duty of diligence and has only been delayed by the acquisition of Declarations and other facts and evidence.

Respectfully submitted,
MAIER & MAIER, PLLC


Timothy J. Maier

Date: December 1, 2006

c/o Timothy J. Maier, Esq.
Maier & Maier, PLLC
128 N. Pitt St., Second Floor
Alexandria, VA 22314 USA
(703) 740 - 8322 x101

EXHIBIT F

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:	U.S. Patent No.:	6,066,160
Colvin <i>et al.</i>	Filed:	November 23, 1998
Appl. No. 09/198,087	Issued:	May 23, 2000
For: Passive Knotless Suture Terminator For Use in Minimally Invasive Surgery and to Facilitate Standard Tissue Securing	Art Unit:	3731

Statement in Support of Petition Under 37 C.F.R. § 1.378(b)

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Sir:

In accordance with the requirements of 37 C.F.R. § 1.378(b) and M.P.E.P.
§ 2590, Petitioner makes the following declaration.

I, Aubrey C. Galloway, hereby declare:

- (1) I am a Professor, Vice Chairman and Director of Cardiac Surgical Research at NYU Medical Center and I am the Managing Partner of Quickie, LLC, the owner of US Patent No. 6,066,160.
- (2) As the Managing Partner for Quickie, LLC, I retained Robert E. Krebs *et al.* of the Thelen, Reid & Priest, LLP law firm to transact all post-issuance proceedings and responsibilities in the Patent and Trademark Office including, but not limited to reexamination proceedings and timely payment of the maintenance fee.

EXHIBIT

53

6/11/08

Oct 27 2006 2:38PM

HP LASERJET FAX

P. 1

- 2 -

Colvin *et al.*
Appl. No. 09/198,087

- (3) As Managing Partner for Quickie, LLC, I retained the law firm of Thelen, Reid & Priest to concurrently conduct litigation services for Quickie, LLC.

Conclusion

I declare that all statements made herein of my own knowledge are true and that these statements were made with the knowledge that willful false statements or the like so made are punishable by fine or imprisonment or both under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity and enforceability of the '160 patent.

Respectfully submitted,


Aubrey C. Galloway, MD

Date: 10/27/06

c/o Maier & Maier, PLLC
128 North Pitt Street, Second Floor
Alexandria, VA 22314
(703) 740-8322

EXHIBIT G

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:	U.S. Patent No.:	6,066,160
Colvin <i>et al.</i>	Filed:	November 23, 1998
Appl. No. 09/198,087	Issued:	May 23, 2000
For: Passive Knotless Suture Terminator For Use in Minimally Invasive Surgery and to Facilitate Standard Tissue Securing	Art Unit:	3731

Statement in Support of Petition Under 37 C.F.R. § 1.378(b)

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Sir:

In accordance with the requirements of 37 C.F.R. § 1.378(b) and M.P.E.P.

§ 2590, Petitioner makes the following declaration.

I, Todd S. Sharrin, hereby declare:

- (1) I was an attorney at Pepe & Hazard, LLP, and was responsible for US Patent No. 6,066,160, owned by Quickie, LLC, and responsibility for the subject patent was transferred from Pepe & Hazard to me as an attorney at Greenberg Traurig, LLP, as evidenced by the enclosed letter signed by Alan Fell, Esq., on May 14, 2001, as well as, the Change of Correspondence Address Form dated October 22, 2002 signed by me, the "Fee Address" Indication Form also dated October 22, 2002 also signed by me, the Certificated of Mailing by First Class Mail (37 C.F.R. 1.8)

EXHIBIT

52

6/11/08

- 2 -

Colvin *et al.*
Appl. No. 09/198,087

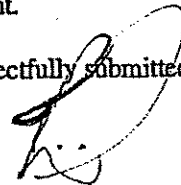
certifying that both forms were mailed to the USPTO on October 22, 2002, and the PTO/Change of Address/Power of Attorney Form indicating that Pepe & Hazard's responsibility for the subject patent has been superseded.

- (2) My responsibility, including the payment of any maintenance fee that may become due, for the subject patent ended prior to the date where the payment of a first maintenance fee was due as evidenced by the enclosed Revocation of Prior Powers of Attorney signed on the behalf of Quickie, LLC, on March 4, 2003 wherein "all prior powers of attorney previously given [were] hereby revoked."

Conclusion

I declare that all statements made herein of my own knowledge are true and that these statements were made with the knowledge that willful false statements or the like so made are punishable by fine or imprisonment or both under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity and enforceability of the '160 patent.

Respectfully submitted,



Todd S. Sharinn, Esq.

Date: 11/20/06

c/o Maier & Maier, PLLC
128 North Pitt Street, Second Floor
Alexandria, VA 22314
(703) 740-8322

EXHIBIT H

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

QUICKIE, LLC,

Plaintiff

- against -

GREENBERG TRAUIG, LLC, THELEN,
REID, BROWN, RAYSMAN & STEINER,
L.L.P. (FORMERLY KNOWN AS THELEN,
REID & PRIEST, LLP); and ROBERT E.
KREBS, ESQ

Defendants

07-cv-10331 (RMB)(DFE)

THELEN, REID, BROWN, RAYSMAN &
STEINER, L.L.P. (FORMERLY KNOWN AS
THELEN, REID & PRIEST, LLP); and
ROBERT E. KREBS, ESQ

Third Party Plaintiffs

- against -

TODD SHARINN, PEPE & HAZARD LLP,
ALAN FELL, and RICK, STEINER, FELL,
& BENOWITZ, LLP

Third Party Defendants

**QUICKIE, LLC'S OBJECTIONS AND RESPONSES TO
GREENBERG TRAUIG LLC'S REQUESTS FOR ADMISSIONS**

Quickie, LLC ("Quickie") objects and responds to Defendant Greenberg Traurig LLC's ("GT") Requests for Admission as follows:

1. Plaintiff Quickie LLC is the owner by assignment of the Patent No. 6,066,160 issued on May 23, 2000 ["the '160 Patent"].

Admit.

2. Exhibit A hereto is a true and correct copy of the Revocation of Prior Powers of Attorney dated March 4, 2003 [the "Revocation"] which Quickie filed with the United States Patent & Trademark Office ["the PTO"].

Quickie admits that Exhibit A is a true and correct copy of the Revocation of Prior Powers of Attorney signed by Quickie for the Patent Re-exam Proceeding (Control No. 90/006,460) on March 4, 2003 (the "Thelen Power of Attorney"), but denies Quickie itself filed any such document with the PTO. Moreover, Quickie denies any implication in this request that the Thelen Power of Attorney was filed in the PTO on March 4, 2003.

3. In the Revocation, Quickie revoked any authority that GT previously had as to the '160 Patent.

Denied.

4. In the Revocation, Quickie appointed Robert Krebs and other attorneys at Thelen Reid & Priest [referred to collectively with its successor Thelen Reid Brown Raysman & Steiner LLP. as "Thelen"] as the new attorneys for Quickie with respect to the '160 Patent to "prosecute and transact all business" in the PTO.

Quickie admits that the Thelen Power of Attorney was filed with the PTO, and that such document speaks for itself.

5. The Revocation listed Krebs and other Thelen attorneys (e.g. Marc Hanish, Adrienne Yeung, Hal Bohner, et al.) as replacement "attorney(s) and/or agent(s)" in place of GT for the '160 Patent.

Quickie admits that the Thelen Power of Attorney was filed with the PTO, and that such document speaks for itself. Quickie denies that the Thelen Power of Attorney makes any mention of replacement attorneys or GT.

6. All persons listed at the bottom of page 1 of the Revocation are or were persons at Thelen.

Quickie admits that the Thelen Power of Attorney was filed with the PTO, and that such document speaks for itself.

7. Exhibit B hereto is a true and correct copy of the Notice Regarding Change of Power of Attorney [the "PTO Notice"] which the PTO sent to GT on April 2, 2003.

Quickie admits that Exhibit B is a true and correct copy of the PTO Notice sent to GT on April 2, 2003.

8. The PTO Notice states that the power of attorney previously given to GT as to the '160 Patent had been revoked by Quickie.

Quickie admits that the PTO Notice contains several statements, including the language referenced in this request, all of which speaks for itself.

9. The PTO Notice states that future correspondence will be mailed to the new address of record.

Quickie admits that the PTO Notice contains several statements, including the language referenced in this request, all of which speaks for itself.

10. The PTO Notice was sent to GT as Quickie's "former attorney/agent".

Quickie admits that the PTO Notice contains several statements, including the language referenced in this request, all of which speaks for itself. Quickie denies this request to the extent it implies that GT was Quickie's former attorney, that the PTO Notice was sent to GT as Quickie's former attorney or agent, or that the PTO Notice somehow terminated GT's and Quickie's attorney-client relationship.

11. Exhibit C hereto is a true and correct copy of the Supplement to Petition dated December 1, 2006 which was filed with the PTO by Quickie through its counsel Maier & Maier, PLLC in December 2006 [“the Supplement to Petition”].

Admit.

12. Quickie authorized the filing of the Supplement to Petition.

Quickie admits that, in connection with Quickie’s efforts to reinstate the ‘160 Patent which had expired due to GT’s negligence, the Supplement to Petition was filed by Quickie’s authorized representatives at Maier & Maier, PLLC.

13. Quickie reviewed the Supplement to Petition before it was filed with the PTO.

Quickie admits that, in connection with Quickie’s efforts to reinstate the ‘160 Patent which had expired due to GT’s negligence, Quickie assisted its authorized representatives at Maier & Maier, PLLC in filing the Supplement to Petition.

14. The statements in the Supplement to Petition are true and accurate.

Quickie admits that the statements set forth in the Supplement to Petition were true and correct to the best of Quickie’s knowledge and belief at the time such document was filed with the PTO in connection with Quickie’s efforts to reinstate the ‘160 Patent which had expired due to GT’s negligence.

15. The following statement in the Supplement to Petition is true and accurate:

“his [i.e. Todd Sharinn’s] responsibility for the ‘160 Patent ended prior to the time period when the payment of a first maintenance fee was due”.

Quickie admits that the referenced statement in the Supplement to Petition was true and correct to the best of Quickie’s knowledge and belief at the time such document was filed with the PTO in connection with Quickie’s efforts to reinstate the ‘160 Patent which had expired to GT’s negligence, but denies any implication in this request that such

statement indicates that all of GT's and Todd Sharinn's responsibilities with respect to the '160 Patent ended prior to the time period when the payment of a first maintenance fee was due.

16. The following statement in the Supplement to Petition is true and accurate:

"Thelen Reid & Priest was granted and held sole and full power in the '160 patent from March 4, 2003 through August 14, 2006".

Quickie admits that the referenced statement in the Supplement to Petition was true and correct to the best of Quickie's knowledge and belief at the time such document was filed with the PTO in connection with Quickie's efforts to reinstate the '160 Patent which had expired to GT's negligence, but denies any implication in this request that such statement indicates that all of GT's and Todd Sharinn's responsibilities with respect to the '160 Patent ended prior to the time period when the payment of a first maintenance fee was due.

17. The following statement in the Supplement to Petition is true and accurate:

"The Patent Owner [i.e. Quickie] fully believed that their valuable legal rights in the '160 patent would be justly protected by the attorneys and law firm of Thelen Reid & Priest when the Patent Owner chose them for representation and executed the Power of Attorney dated March 4, 2003".

Quickie admits that the referenced statement in the Supplement to Petition was true and correct to the best of Quickie's knowledge and belief at the time such document was filed with the PTO in connection with Quickie's efforts to reinstate the '160 Patent which had expired to GT's negligence, but denies any implication in this request that such statement indicates that Quickie was not also looking to GT and Todd Sharinn to protect its valuable legal rights in the '160 Patent.

18. The maintenance fee on the '160 Patent [“the Maintenance Fee”] first became due on May 23, 2003.

Denied.

19. GT was no longer Quickie's attorney as to the '160 Patent when the Maintenance Fee first became due.

Denied.

20. Thelen was Quickie's counsel as to the '160 Patent when the Maintenance Fee first became due.

Quickie admits that Thelen was Quickie's counsel as to the '160 Patent when the Maintenance Fee first became due, but denies any implication that GT was not also Quickie's counsel as to the '160 Patent when the Maintenance Fee first became due.

21. The Maintenance Fee was payable at any time during the one year period commencing May 23, 2003 and ending approximately May 23, 2004 [“the One-Year Period In Issue”].

Quickie admits that Todd Sharinn advised Quickie that maintenance fees were due on the '160 Patent 3.5 years from the date of issuance, but objects to this request to the extent it seeks a legal conclusion concerning interpretation of PTO regulations.

22. GT was no longer Quickie's attorney as to the '160 Patent during the One- Year Period In Issue when the Maintenance Fee was due and could have been paid.

Denied.

23. Thelen was Quickie's counsel during the One-Year Period In Issue when the Maintenance Fee was due and could have been paid.

Quickie admits that Thelen was Quickie's counsel as to the '160 Patent when the Maintenance Fee first became due and could have been paid, but denies any implication that GT was not also Quickie's counsel as to the '160 Patent when the Maintenance Fee first became due and could have been paid.

24. Exhibit D hereto is a true and correct copy of the Statement in Support of Petition dated October 27, 2006 signed by Aubrey Galloway as the Managing Partner of Quickie which was filed with the PTO in 2006 ["the Statement in Support"].

Admit.

25. The Statement in Support was made under the penalty of perjury pursuant to 18 U.S.C. 1001.

Quickie admits that the Statement in Support contains language referring to the referenced United States Code provision, which language speaks for itself.

26. The statements in the Statement in Support are true and accurate.

Quickie admits that the statements set forth in the Statement in Support were true and correct to the best of Quickie's knowledge and belief at the time such document was filed with the PTO in connection with Quickie's efforts to reinstate the '160 Patent which had expired due to GT's negligence.

27. The following statement by Aubrey Galloway of Quickie in the Statement in Support is true and accurate:

"As the Managing Partner for Quickie, LLC, I retained Robert E. Krebs et al. of the Thelen, Reid & Priest, LLP law firm to transact all post-issuance proceedings and responsibilities in the Patent and Trademark Office including, but not limited to reexamination proceedings and timely payment of the maintenance fee".

Quickie admits that the referenced statement in the Statement in Support was true and correct to the best of Quickie's knowledge and belief at the time such document was filed with the PTO in connection with Quickie's efforts to reinstate the '160 Patent which had expired to GT's negligence, but denies any implication in this request that such statement indicates that all of GT's and Todd Sharinn's responsibilities with respect to the '160 Patent ended prior to the time period when the payment of a first maintenance fee was due.

28. Exhibit E hereto is a true and correct copy of the Change of Attorney Docket Number and Change of Notice concerning the '160 Patent which was filed with the PTO by Thelen several months before the expiration of the One-Year Period In Issue.

Quickie admits that Exhibit E is a true and correct copy of the Change of Attorney Docket Number and Change of Notice concerning Control No. 90/006,460 which was filed with the PTO by Thelen on December 5, 2003, otherwise, this request is denied.

29. Under applicable law and regulations, the owner of a patent must pay periodic maintenance fees to keep the patent in effect.

Quickie Objects to this request as calling for a legal conclusion.

30. The first Maintenance Fee for the '160 Patent was due during the One-Year Period In Issue.

Quickie admits that Todd Sharinn advised Quickie that maintenance fees were due on the '160 Patent 3.5 years from the date of issuance, but objects to this request to the extent it seeks a legal conclusion concerning interpretation of PTO regulations.

31. The Maintenance Fee for the '160 Patent could have be paid at any time during the One-Year Period In Issue.

Quickie admits that Todd Sharinn advised Quickie that maintenance fees were due on the '160 Patent 3.5 years from the date of issuance, but objects to this request to the extent it seeks a legal conclusion concerning interpretation of PTO regulations.

32. The '160 Patent has now expired due to nonpayment of the Maintenance Fee which was due during the One-Year Period In Issue.

Quickie admits that the '160 Patent has now expired for failure to pay maintenance fees due to GT's negligence in not providing the promised notice prior to such maintenance fees becoming due.

33. Rick, Steiner, Fell & Benowitz, LLP and in particular its partner Alan Fell [collectively "Rick Steiner"] was and is the general counsel and chief legal adviser for Quickie in all of its business dealings, including the '160 Patent, during the One-Year Period In Issue.

Denied.

34. Rick Steiner had oversight and direct responsibility for assuring that the '160 Patent was maintained and kept extant.

Denied.

35. Rick Steiner knew and was advised, prior to and during the One-Year Period In Issue that the maintenance fee would be due and had to be paid.

Quickie admits that it has reviewed correspondence from Todd Sharinn wherein he advised Rick Steiner that he would provide notice prior to maintenance fees becoming due on the '160 Patent 3.5 years from the date of issuance. After reasonable inquiry, however, the information known or easily obtainable is insufficient to enable Quickie to admit or deny this request to the extent it seeks information concerning Rick Steiner's knowledge concerning such correspondence.

36. In 1998, Pepe & Hazard LLP, ["Pepe"] was engaged by Quickie to provide services in connection with the '160 Patent.

Admit.

37. Thereafter, in 2001, Greenberg Traurig LLP ["GT"] was engaged to provide services concerning the '160 Patent.

Quickie admits that it hired GT in 2001 to provide services concerning the '160 Patent, but denies any implication in this request that its relationship with Pepe was terminated when GT was hired.

38. Prior to mid-March 2003, Quickie replaced GT with Thelen as its attorneys with respect to all other aspects of the '160 Patent.

Objection – this request is vague and ambiguous in that it references "all other aspects" of the '160 Patent but provides no indication as to what other aspects are being referenced. Otherwise, this request is denied.

39. When it hired Thelen as to the '160 Patent, Quickie terminated GT's role, responsibility and services as to the '160 Patent.

Denied.

40. Quickie had an opportunity to pay the Maintenance Fee during the One-Year Period In Issue when the Maintenance Fee was due.

Denied. Due to GT's negligence, Quickie did not know the Maintenance Fee was due and, thus, Quickie did not have an opportunity to pay the Maintenance Fee.

41. Quickie had an opportunity to pay the Maintenance Fee after GT was no longer its attorney as to the '160 Patent and before the '160 Patent expired for non-payment of the Maintenance Fee.

Denied. GT was still Quickie's attorney with respect to the '160 Patent through the time period the '160 Patent expired for non-payment of the Maintenance Fee. In addition, due to GT's negligence, Quickie did not know the Maintenance Fee was due and, thus, Quickie did not have an opportunity to pay the Maintenance.

42. Thelen had an opportunity to pay the Maintenance Fee or to advise Quickie to pay the Maintenance Fee before it was due.

Quickie admits that Thelen had an opportunity to pay the Maintenance Fees or advise Quickie to do the same, but Quickie denies this request to the extent it implies that GT and Todd Sharinn had no responsibility for honoring their promise to provide notice prior to those maintenance fees becoming due.

43. Thelen had an opportunity to pay the Maintenance Fee or to advise Quickie to pay the Maintenance Fee during the One-Year Period In Issue when the Maintenance Fee was due.

Quickie admits that Thelen had an opportunity to pay the Maintenance Fees or advise Quickie to do the same, but Quickie denies this request to the extent it implies that GT and Todd Sharinn had no responsibility for honoring their promise to provide notice prior to those maintenance fees becoming due.

44. Thelen had an opportunity to pay the Maintenance Fee or to advise Quickie to pay the Maintenance Fee before the '160 Patent expired for non-payment of the Maintenance Fee.

Quickie admits that Thelen had an opportunity to pay the Maintenance Fees or advise Quickie to do the same, but Quickie denies this request to the extent it implies that GT and Todd Sharinn had no responsibility for honoring their promise to provide notice prior to those maintenance fees becoming due.

45. Rick Steiner had an opportunity to pay the Maintenance Fee or to advise Quickie to pay the Maintenance Fee before it was due.

Quickie admits that Rick Steiner had an opportunity to pay the Maintenance Fees or advise Quickie to do the same, but Quickie denies this request to the extent it implies that Rick Steiner had any such obligation, that Quickie was relying on Rick Steiner to pay the maintenance fees or provide such notice, or that GT and Todd Sharinn had no responsibility for honoring their promise to provide notice prior to those maintenance fees becoming due.

46. Rick Steiner had an opportunity to pay the Maintenance Fee or to advise Quickie to pay the Maintenance Fee during the One-Year Period In Issue when the Maintenance Fee was due.

Quickie admits that Rick Steiner had an opportunity to pay the Maintenance Fees or advise Quickie to do the same, but Quickie denies this request to the extent it implies that Rick Steiner had any such obligation, that Quickie was relying on Rick Steiner to pay the maintenance fees or provide such notice, or that GT and Todd Sharinn had no responsibility for honoring their promise to provide notice prior to those maintenance fees becoming due.

47. Rick Steiner had an opportunity to pay the Maintenance Fee or to advise Quickie to pay the Maintenance Fee before the '160 Patent expired for non-payment of the Maintenance Fee.

Quickie admits that Rick Steiner had an opportunity to pay the Maintenance Fees or advise Quickie to do the same, but Quickie denies this request to the extent it implies that Rick Steiner had any such obligation, that Quickie was relying on Rick Steiner to pay

the maintenance fees or provide such notice, or that GT and Todd Sharinn had no responsibility for honoring their promise to provide notice prior to those maintenance fees becoming due.

48. Quickie had opportunities to cure the nonpayment of the Maintenance Fee, or to advise Quickie to cure the nonpayment after the One-Year Period In Issue had expired on May 23, 2004, including when amendments were filed to the '160 Patent in 2005.

Objection – this request is vague, ambiguous, and nonsensical in that it asks whether “Quickie had opportunities . . . to advise Quickie to cure the nonpayment” Otherwise, this request is denied.

49. Thelen had opportunities to cure the nonpayment of the Maintenance Fee, or to advise Quickie to cure the nonpayment after the One-Year Period In Issue had expired on May 23, 2004, including when amendments were filed to the '160 Patent in 2005.

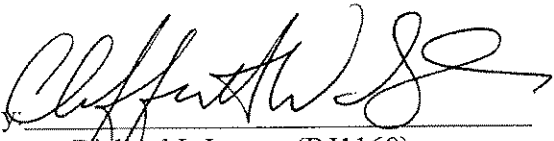
Quickie admits that Thelen had the referenced opportunities, but denies this request to the extent it implies that GT did not also have such opportunities or that Thelen's failure to recognize those opportunities relieves GT and Todd Sharinn of their promise to notify Quickie prior to maintenance fees becoming due on the '160 Patent.

50. Rick Steiner had opportunities to cure the nonpayment of the Maintenance Fee, or to advise Quickie to cure the nonpayment after the One-Year Period In Issue had expired on May 23, 2004, including when amendments were filed to the '160 Patent in 2005.

Quickie admits that anyone, including Rick Steiner, GT, or Thelen, had an opportunity to cure the nonpayment of the Maintenance Fee, or to advise Quickie to cure the nonpayment, but Quickie denies this request to the extent it implies that Rick Steiner had any such obligation, that Quickie was relying on Rick Steiner to pay the maintenance

fees, or that Thelen's failure to recognize those opportunities relieves GT and Todd Sharinn of their promise to notify Quickie prior to maintenance fees becoming due on the '160 Patent.

Dated: New York, New York
March 31, 2008

By 
Richard I. Janvey (RJ1160)
Joan M. Secofsky (JS4035)
Stephen T. Loden (SL8754)
Allan B. Diamond (Pro Hac Vice)
Clifford H. Walston (Pro Hac Vice)

DIAMOND MCCARTHY LLP
620 Eighth Avenue, 39th Floor
New York, New York 10018
Telephone No.: (212) 430-5400
Facsimile No: (212) 430-5499

ATTORNEYS FOR
PLAINTIFF QUICKIE LLC

CERTIFICATE OF SERVICE

I hereby certify that, on March 31, 2008, I caused to be served the within Plaintiff Quickie, LLC's Responses to Defendant Greenberg Traurig LLP's Requests for Admissions in the above captioned cause by United States first Class Mail, facsimile, and/or electronic mail to the following:

Martin I. Kaminsky
Justin Y. K. Chu
Pollack & Kaminsky
114 West 47th Street
New York, New York 10036
mikaminsky@pollacklawfirm.com
jchu@pollacklawfirm.com

Steven C. Krane
Proskauer Rose LLP
1585 Broadway
New York, NY 10036-8299
skrane@proskauer.com

Pamela A. Bresnahan
Vorys, Sater, Seymour and Pease LLP
1828 I Street, N.W., 11th Floor
Washington, DC 20036-5109
pbresnahan@vssp.com



Clifford H. Walston

EXHIBIT I

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

QUICKIE, LLC,

Plaintiff

v.

GREENBERG TRAUIG, LLP, THELEN
REID BROWN RAYSMAN & STEINER, LLP
(f/k/a THELEN, REID & PRIEST, LLP)
and ROBERT KREBS,

Defendants

07 Civ. 10331 (RMB) (DFE)

THELEN REID BROWN RAYSMAN &
STEINER, LLP and ROBERT E. KREBS,

Third-Party Plaintiffs

v.

TODD SHARINN, PEPE & HAZARD, LLP,
ALAN FELL and RICK, STEINER, FELL &
BENOWITZ, LLP,

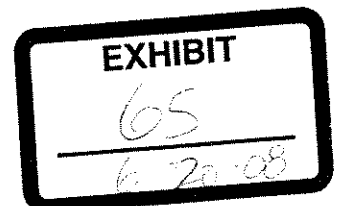
Third-Party Defendants.

**RICK STEINER DEFENDANTS' RESPONSES TO
GREENBERG TRAUIG'S REQUEST FOR ADMISSIONS**

Third-Party Defendants, Alan Fell and Rick, Steiner, Fell & Benowitz, LLP, (the "Rick Steiner Defendants"), by their undersigned counsel, respond to Greenberg Traurig's Request for Admissions. The Rick Steiner Defendants reserve the right to supplement or amend any response as discovery proceeds.

REQUEST TO ADMIT NO. 1:

Plaintiff Quickie LLC ["Quickie"] is the owner by assignment of the Patent No. 6,066,160 issued on May 23, 2000 ["the '160 Patent"].



RESPONSE TO REQUEST TO ADMIT NO. 1:

The Rick Steiner Defendants deny Request to Admit No. 1.

REQUEST TO ADMIT NO. 2:

Exhibit A hereto is a true and correct copy of the Revocation of Prior Powers of Attorney dated March 4, 2002 [the "Revocation"] which Quickie filed with the United States Patent & Trademark Office [the "PTO"].

RESPONSE TO REQUEST TO ADMIT NO. 2:

The Rick Steiner Defendants admit Request to Admit No. 2.

REQUEST TO ADMIT NO. 3:

In the Revocation, Quickie revoked any authority that GT previously had as to the '160 Patent.

RESPONSE TO REQUEST TO ADMIT NO. 3:

The Rick Steiner Defendants object to Request to Admit No. 3 on the basis that the response calls for a legal conclusion. To the extent that an admission or denial is required, the Rick Steiner Defendants deny Request to Admit No. 3.

REQUEST TO ADMIT NO. 4:

In the Revocation, Quickie appointed Robert Krebs and other attorneys at Thelen Reid & Priest [referred to collectively with its successor Thelen Reid Brown Raysman & Steiner LLP as "Thelen"] as the new attorneys for Quickie with respect to the '160 Patent to "prosecute and transact all business" in the PTO.

RESPONSE TO REQUEST TO ADMIT NO. 4:

The Rick Steiner Defendants admit Request to Admit No. 4.

REQUEST TO ADMIT NO. 5:

The Revocation listed Krebs and other Thelen attorneys (e.g. Marc Hanish, Adrienne Yeung, Hal Boner, et al.) as replacement "attorney(s) and/or agent(s)" in place of GT for the '160 Patent.

RESPONSE TO REQUEST TO ADMIT NO. 5:

The Rick Steiner Defendants object to Request to Admit No. 5 on the basis that the word "replacement attorneys" is vague and ambiguous. To the extent that an admission or denial is required, the Rick Steiner Defendants deny Request to Admit No. 5.

REQUEST TO ADMIT NO. 6:

All persons listed at the bottom of page 1 of the Revocation are or were persons at Thelen.

RESPONSE TO REQUEST TO ADMIT NO. 6:

The Rick Steiner Defendants object to this request because the phrase "persons at Thelen" is vague and ambiguous. Further, the Rick Steiner Defendants are unable to admit or deny Request to Admit No. 6 because they have no way to readily determine which, if any, of the persons listed at the bottom of page 1 of the Revocation were associated with Thelen. To the extent that an admission or a denial is necessary, the Rick Steiner Defendants deny Request to Admit No. 6.

REQUEST TO ADMIT NO. 7:

Exhibit B hereto is a true and correct copy of the Notice Regarding Change of Power of Attorney [the "PTO Notice"] which the PTO sent to GT on April 2, 2003.

RESPONSE TO REQUEST TO ADMIT NO. 7:

The Rick Steiner Defendants admit Request to Admit No. 7.

REQUEST TO ADMIT NO. 8:

The PTO Notice states that the power of attorney previously given to GT as to the '160 Patent had been revoked by Quickie.

RESPONSE TO REQUEST TO ADMIT NO. 8:

The Rick Steiner Defendants deny Request to Admit No. 8.

REQUEST TO ADMIT NO. 9:

The PTO Notice states that future correspondence will be mailed to the new address of record.

RESPONSE TO REQUEST TO ADMIT NO. 9:

The Rick Steiner Defendants admit Request to Admit No. 9.

REQUEST TO ADMIT NO. 10:

The PTO Notice was sent to GT as Quickie's "former attorney/agent".

RESPONSE TO REQUEST TO ADMIT NO. 10:

The Rick Steiner Defendants admit Request to Admit No. 9.

REQUEST TO ADMIT NO. 11:

Exhibit C hereto is a true and correct copy of the Supplement to Petition dated December 1, 2006 which was filed with the PTO by Quickie through its counsel Maier & Maier, PLLC in December 2006 ["the Supplement to Petition"].

RESPONSE TO REQUEST TO ADMIT NO. 11:

The Rick Steiner Defendants deny Request to Admit No. 11.

REQUEST TO ADMIT NO. 12:

Quickie authorized the filing of the Supplement to Petition.

RESPONSE TO REQUEST TO ADMIT NO. 12:

The Rick Steiner Defendants are unable to admit or deny Request to Admit No. 12 because they have no way to readily determine whether Quickie authorized the filing of the Supplement to Petition. To the extent that an admission or a denial is necessary, the Rick Steiner Defendants deny Request to Admit No. 12.

REQUEST TO ADMIT NO. 13:

Quickie reviewed the Supplement to Petition before it was filed with the PTO.

RESPONSE TO REQUEST TO ADMIT NO. 13:

The Rick Steiner Defendants are unable to admit or deny Request to Admit No. 12 because they have no way to readily determine whether Quickie reviewed the Supplement to Petition before it was filed with the PTO as Quickie retained other counsel to represent it before the PTO in its Petition Pursuant to 37 CFR 1.378(b). To the extent that an admission or a denial is necessary, the Rick Steiner Defendants deny Request to Admit No. 13.

REQUEST TO ADMIT NO. 14:

The statements in the Supplement to Petition are true and accurate.

RESPONSE TO REQUEST TO ADMIT NO. 14:

The Rick Steiner Defendants are unable to admit or deny Request to Admit No. 14 because they have no way of knowing whether the statements in the Supplement to Petition are true and accurate since the Rick Steiner Defendants were not involved in the preparation of this document and Quickie retained other counsel to represent it before the PTO in its Petition Pursuant to 37 CFR 1.378(b). To the extent that an admission or a denial is necessary, the Rick Steiner Defendants deny Request to Admit No. 14.

REQUEST TO ADMIT NO. 15:

The following statement in the Supplement to Petition is true and accurate:

“his [i.e. Todd Sharinn’s] responsibility for the ‘160 Patent ended prior to the time period when the payment of a first maintenance fee was due.”

RESPONSE TO REQUEST TO ADMIT NO. 15:

The Rick Steiner Defendants deny Request to Admit No. 15.

REQUEST TO ADMIT NO. 16:

The following statement in the Supplement to Petition is true and accurate:

"Thelen Reid & Priest was granted and held sole and full power in the '160 patent from March 4, 2003 through August 14, 2006."

RESPONSE TO REQUEST TO ADMIT NO. 16:

The Rick Steiner Defendants deny Request to Admit No. 16.

REQUEST TO ADMIT NO. 17:

The following statement in the Supplement to Petition is true and accurate:

The Patent Owner [i.e. Quickie] fully believed that their valuable Legal rights in the '160 patent would be justly protected by the attorneys and law firm of Thelen Reid & Priest when the Patent Owner chose them for representation and executed the Power of Attorney dated March 4, 2003."

RESPONSE TO REQUEST TO ADMIT NO. 17:

The Rick Steiner Defendants deny Request to Admit No. 17 and further states that they have know way of knowing what, if anything, Quickie fully believed on or about March 4, 2003.

REQUEST TO ADMIT NO. 18:

The maintenance fee on the '160 Patent ["the Maintenance Fee"] first became due on May 23, 2003.

RESPONSE TO REQUEST TO ADMIT NO. 18:

The Rick Steiner Defendants admit Request to Admit No. 18.

REQUEST TO ADMIT NO. 19:

GT was no longer Quickie's attorney as to the '160 Patent when the Maintenance fee first became due.

RESPONSE TO REQUEST TO ADMIT NO. 19:

The Rick Steiner Defendants admit that GT was no longer Quickie's attorney as to the '160 Patent as of the date of the Revocation; however, the Rick Steiner Defendants deny that GT had no responsibility for advising Quickie prior to the Revocation that the maintenance fee for the '160 Patent was due.

REQUEST TO ADMIT NO. 20:

Thelen was Quickie's counsel as to the '160 Patent when the Maintenance Fee first became due.

RESPONSE TO REQUEST TO ADMIT NO. 20:

The Rick Steiner Defendants admit Request to Admit No. 20.

REQUEST TO ADMIT NO. 21:

The Maintenance Fee was payable at any time during the one year period commencing May 23, 2003 and ending approximately May 23, 2004 ["the One-Year Period in Issue"].

RESPONSE TO REQUEST TO ADMIT NO. 21:

The Rick Steiner Defendants deny Request to Admit No. 21.

REQUEST TO ADMIT NO. 22:

GT was no longer Quickie's attorney as to the '160 Patent during the One-Year Period In Issue when the Maintenance Fee was due and could have been paid.

RESPONSE TO REQUEST TO ADMIT NO. 22:

The Rick Steiner Defendants admit Request to Admit No. 22.

REQUEST TO ADMIT NO. 23:

Thelen was Quickie's counsel during the One-Year Period in Issue when the Maintenance Fee was due and could have been paid.

RESPONSE TO REQUEST TO ADMIT NO. 23:

The Rick Steiner Defendants admit Request to Admit No. 23.

REQUEST TO ADMIT NO. 24:

Exhibit D is a true and correct copy of the Statement in Support of Petition dated October 27, 2006 signed by Aubrey Galloway as the Managing Partner of Quickie which was filed with the PTO in 2006 ["Statement in Support"].

RESPONSE TO REQUEST TO ADMIT NO. 24:

The Rick Steiner Defendants admit Request to Admit No. 24.

REQUEST TO ADMIT NO. 25:

The Statement in Support was made under the penalty of perjury pursuant to 18 U.S.C. 1001.

RESPONSE TO REQUEST TO ADMIT NO. 25:

The Rick Steiner Defendants admit Request to Admit No. 25.

REQUEST TO ADMIT NO. 26:

The statements in the Statement in Support are true and accurate.

RESPONSE TO REQUEST TO ADMIT NO. 26:

The Rick Steiner Defendants have no way of knowing whether the statements in the Statement in Support are true and accurate and therefore deny Request to Admit No. 26.

REQUEST TO ADMIT NO. 27:

The following statement by Aubrey Galloway of Quickie in the Statement in Support is true and accurate:

"As the Managing Partner for Quickie, LLC, I retained Robert E. Krebs et al. of the Thelen, Reid & Priest, LLP law firm to transact All post-issuance proceedings and responsibilities in the Patent and Trademark Office including, but not limited to reexamination Proceedings and timely payment of the maintenance fees."

RESPONSE TO REQUEST TO ADMIT NO. 27:

The Rick Steiner Defendants have no way of knowing the reasons why Aubrey Galloway retained Robert E. Krebs and therefore deny Request to Admit No. 27.

REQUEST TO ADMIT NO. 28:

Exhibit E hereto is a true and correct copy of the Change of Attorney Docket Number and Change of Notice concerning the '160 Patent which was filed with the PTO by Thelen several months before the expiration of the One-Year Period In Issue.

RESPONSE TO REQUEST TO ADMIT NO. 28:

The Rick Steiner Defendants deny Request to Admit No. 28 as phrased

REQUEST TO ADMIT NO. 29:

Under applicable law and regulations, the owner of a patent must pay periodic maintenance fees to keep the patent in effect.

RESPONSE TO REQUEST TO ADMIT NO. 29:

The Rick Steiner Defendants deny Request to Admit No. 29.

REQUEST TO ADMIT NO. 30:

The first Maintenance Fee for the '160 Patent was due during the One-Year Period In Issue.

RESPONSE TO REQUEST TO ADMIT NO. 30:

The Rick Steiner Defendants admit Request to Admit No. 30.

REQUEST TO ADMIT NO. 31:

The Maintenance Fee for the '160 Patent could have be[en] (sic) paid at any time during the One-Year Period In Issue.

RESPONSE TO REQUEST TO ADMIT NO. 31:

The Rick Steiner Defendants deny Request to Admit No. 31.

REQUEST TO ADMIT NO. 32:

The '160 Patent has now expired due to nonpayment of the Maintenance Fee which was due during the One-Year Period In Issue.

RESPONSE TO REQUEST TO ADMIT NO. 32:

The Rick Steiner Defendants deny Request to Admit No. 32.

REQUEST TO ADMIT NO. 33:

Rick, Steiner, Fell & Benowitz, LLP and in particular its partner Alan Fell [collectively "Rick Steiner"] was and is the general counsel and chief legal adviser for Quickie in all of its business dealings, including the '160 Patent, during the One-Year Period In Issue.

RESPONSE TO REQUEST TO ADMIT NO. 33:

The Rick Steiner Defendants deny Request to Admit No. 33.

REQUEST TO ADMIT NO. 34:

Rick Steiner had oversight and direct responsibility for assuring that the '160 Patent was maintained and kept extant.

RESPONSE TO REQUEST TO ADMIT NO. 34:

The Rick Steiner Defendants deny Request to Admit No. 34.

REQUEST TO ADMIT NO. 35:

Rick Steiner knew and was advised prior to and during the One-Year Period In Issue that the maintenance fee would be due and had to be paid.

RESPONSE TO REQUEST TO ADMIT NO. 35:

The Rick Steiner Defendants deny Request to Admit No. 35.

REQUEST TO ADMIT NO. 36:

In 1998, Pepe & Hazard LLP, ["Pepe"] was engaged by Quickie to provide services in connection with the '160 Patent.

RESPONSE TO REQUEST TO ADMIT NO. 36:

The Rick Steiner Defendants admit Request to Admit No. 36.

REQUEST TO ADMIT NO. 37:

Thereafter, in 2001, Greenberg Traurig LLP ["GT"] was engaged to provide services concerning the '160 Patent.

RESPONSE TO REQUEST TO ADMIT NO. 37:

The Rick Steiner Defendants admit Request to Admit No. 37.

REQUEST TO ADMIT NO. 38:

Prior to mid-March 2003, Quickie replaced GT with Thelen as its attorneys with respect to all other aspects of the '160 Patent.

RESPONSE TO REQUEST TO ADMIT NO. 38:

The Rick Steiner Defendants object to Request to Admit No. 38 because the request is incomprehensible. To the extent that an admission or a denial is necessary, the Rick Steiner Defendants deny Request to Admit No. 38.

REQUEST TO ADMIT NO. 39:

When it hired Thelen as to the '160 Patent, Quickie terminated GT's role, responsibility and services as to the '160 Patent.

RESPONSE TO REQUEST TO ADMIT NO. 39:

The Rick Steiner Defendants deny Request to Admit No. 39.

REQUEST TO ADMIT NO. 40:

Quickie had an opportunity to pay the Maintenance Fee during the One-Year Period In Issue when the Maintenance Fee was due.

RESPONSE TO REQUEST TO ADMIT NO. 40:

The Rick Steiner Defendants admit Request to Admit No. 40.

REQUEST TO ADMIT NO. 41:

Quickie had an opportunity to pay the Maintenance Fee after GT was no longer its attorney as to the '160 Patent and before the '160 Patent expired for non-payment of the Maintenance Fee.

RESPONSE TO REQUEST TO ADMIT NO. 41:

The Rick Steiner Defendants object to Request to Admit No. 41 because the Request, as worded, is vague and ambiguous as it does not state when GT ceased to be Quickie's attorney as to the '160 Patent. To the extent that an admission or denial is required, the Rick Steiner Defendants deny Request to Admit No. 41.

REQUEST TO ADMIT NO. 42:

Thelen had an opportunity to pay the Maintenance Fee or to advise Quickie to pay the Maintenance Fee before it was due.

RESPONSE TO REQUEST TO ADMIT NO. 42:

The Rick Steiner Defendants admit that Thelen had an opportunity to advise Quickie to pay the Maintenance Fee before it was due, but deny that Thelen had the opportunity to pay the Maintenance Fee before it was due.

REQUEST TO ADMIT NO. 43:

Thelen had an opportunity to pay the Maintenance Fee or to advise Quickie to pay the Maintenance Fee during the One-Year Period In Issue when the Maintenance Fee was due.

RESPONSE TO REQUEST TO ADMIT NO. 43:

The Rick Steiner Defendants admit Request to Admit No. 43.

REQUEST TO ADMIT NO. 44:

Thelen had an opportunity to pay the Maintenance Fee or to advise Quickie to pay the Maintenance Fee before the '160 Patent expired for non-payment of the Maintenance Fee.

RESPONSE TO REQUEST TO ADMIT NO. 44:

The Rick Steiner Defendants deny request to Admit No. 44.

REQUEST TO ADMIT NO. 45:

Rick Steiner had an opportunity to pay the Maintenance Fee or to advise Quickie to pay the Maintenance Fee before it was due.

RESPONSE TO REQUEST TO ADMIT NO. 45:

The Rick Steiner Defendants deny Request to Admit No. 45.

REQUEST TO ADMIT NO. 46:

Rick Steiner had an opportunity to pay the Maintenance Fee or to advise Quickie to pay the Maintenance Fee during the One-Year Period In Issue when the Maintenance Fee was due.

RESPONSE TO REQUEST TO ADMIT NO. 46:

The Rick Steiner Defendants deny Request to Admit No. 46.

REQUEST TO ADMIT NO. 47:

Rick Steiner had an opportunity to pay the Maintenance Fee or to advise Quickie to pay the Maintenance Fee before the '160 Patent expired for non-payment of the Maintenance Fee.

RESPONSE TO REQUEST TO ADMIT NO. 47:

The Rick Steiner Defendants deny Request to Admit No. 47.

REQUEST TO ADMIT NO. 48:

Quickie had opportunities to cure the nonpayment of the Maintenance Fee, or to advise Quickie to cure the nonpayment after the One-Year Period In Issue had expired on May 23, 2004, including when amendments were filed to the '160 Patent in 2005.

RESPONSE TO REQUEST TO ADMIT NO. 48:

The Rick Steiner Defendants object to Request to Admit No. 48, because it is incomprehensible how Quickie could advise itself "to cure the nonpayment". To the extent that an admission or denial is required, the Rick Steiner Defendants deny Request No. 48.

REQUEST TO ADMIT NO. 49:

Thelen had opportunities to cure the nonpayment of the Maintenance Fee, or to advise Quickie to cure the nonpayment after the One-Year Period In Issue had expired on May 23, 2004, including when amendments were filed to the '160 Patent in 2005.

RESPONSE TO REQUEST TO ADMIT NO. 49:

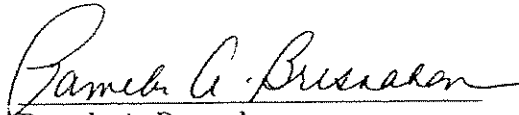
The Rick Steiner Defendants admit Request to Admit No. 49.

REQUEST TO ADMIT NO. 50:

Rick Steiner had opportunities to cure the nonpayment of the Maintenance Fee, or to advise Quickie to cure the nonpayment after the One-Year Period In Issue had expired on May 23, 2004, including when amendments were filed to the '160 Patent in 2005.

RESPONSE TO REQUEST TO ADMIT NO. 50:

The Rick Steiner Defendants deny request to Admit No. 50.

A handwritten signature in black ink, reading "Pamela A. Bresnahan". The signature is fluid and cursive, with the first name "Pamela" being more prominent and the last name "Bresnahan" following in a similar style.

Pamela A. Bresnahan
Elizabeth Treubert Simon
Vorys, Sater, Seymour and Pease LLP
1828 L Street, N.W., 11th Floor
Washington, D.C. 20036
(202) 467-8800

Frank W. Ryan
Nixon Peabody LLP
437 Madison Avenue
New York, NY 10022
(212) 940-3000

Attorneys for Third-Party Defendants
Rick, Steiner, Fell & Benowitz, LLP and
Alan Fell

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 28th day of March, 2008, a copy of the foregoing Rick Steiner Defendants' Responses to Greenberg Traurig's Request for Admissions was mailed, first class and postage pre-paid to:

Stephen Loden
Diamond McCarthy, LLP
Two Houston Center
909 Fanin, Suite 1500
Houston, Texas 77010
Counsel for Plaintiff

Richard Janvey
Diamond McCarthy
620 8th Avenue, 39th Floor
New York, New York 10018
Counsel for Plaintiff

Martin I. Kaminsky
Justin Y.K. Chu
Pollack & Kaminsky
114 W. 47th Street
New York, New York 10036
Counsel for Defendants
Greenberg Traurig, LLP and Todd Sharinn

Steven C. Krane
Proskauer Rose LLP
1585 Broadway
New York, New York 10036-8299
Counsel for Defendants/Third-Party Plaintiffs
Thelen Reid Brown Raysman & Steiner LLP and
Robert E. Krebs

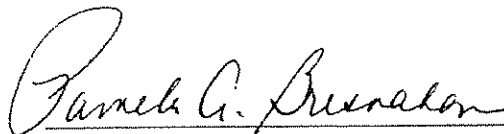

Pamela A. Bresnahan

EXHIBIT J

Steven C. Krane
PROSKAUER ROSE LLP
1585 Broadway
New York, NY 10036-8299
(212) 969-3435
skrane@proskauer.com

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

QUICKIE, LLC,

Plaintiff,

07 Civ. 10331 (RMB) (DFE)

-against-

**THELEN DEFENDANTS' RESPONSE
TO GREENBERG TRAUIG'S
REQUEST FOR ADMISSION**

GREENBERG TRAUIG, LLP, THELEN
REID BROWN RAYSMAN & STEINER LLP
(f/k/a THELEN, REID & PRIEST LLP) and
ROBERT E. KREBS,

ECF CASE

Defendants.

THELEN REID BROWN RAYSMAN &
STEINER LLP (f/k/a THELEN, REID &
PRIEST LLP) and ROBERT E. KREBS,

Third-Party Plaintiffs,

-against-

TODD SHARINN, ALAN FELL and
RICK, STEINER, FELL & BENOWITZ, LLP,

Third-Party Defendants.

In accordance with Rules 26 and 36 of the Federal Rules of Civil Procedure, Defendants Thelen Reid Brown Raysman & Steiner LLP ("Thelen") and Robert E. Krebs ("Krebs") (collectively the "Thelen Defendants"), by and through their attorneys, Proskauer Rose LLP,

hereby object and respond to Greenberg Traurig's Request for Admission (the "Requests") as follows:

GENERAL RESPONSES AND OBJECTIONS

The following General Responses and Objections apply to and are expressly made part of the Thelen Defendants' specific responses, set forth below, to each request.

By responding to any of the specific Requests, the Thelen Defendants do not waive the right to object to the use of any such information disclosed herein for any reason including, but not limited to, relevancy objections. In responding to each Request, the Thelen Defendants do not concede that any of the information provided is relevant, material, admissible in evidence or reasonably calculated to lead to the discovery of admissible evidence.

1. The Thelen Defendants object to the Requests as a whole, and to each Request contained therein, to the extent they request information that is protected from disclosure by the attorney-client privilege, the attorney work-product doctrine and/or any other applicable privilege or immunity.

2. The Thelen Defendants object to the Requests as a whole, and to each Request contained therein, to the extent they request information, the disclosure of which would constitute an unwarranted invasion of the affected individuals' constitutional, statutory and/or common-law rights of privacy and confidentiality.

3. The Thelen Defendants object to the Requests as a whole, and to each Request contained therein, to the extent they seek private, privileged, and confidential commercial, financial or proprietary business information.

4. The Thelen Defendants object to the Requests as a whole, and to each Request contained therein, to the extent they are overbroad as to time and scope, and/or unduly burdensome and oppressive.

5. The Thelen Defendants object to the Requests as a whole, and to each Request contained therein, to the extent they seek information that is neither relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of admissible evidence.

6. The Thelen Defendants object to the Requests as a whole, and to each Request contained therein, to the extent they are vague and ambiguous or unintelligible, in the context of this matter.

RESPONSES TO SPECIFIC REQUESTS FOR ADMISSIONS

Subject to and without waiver of any of the General Responses and Objections, the Thelen Defendants respond to the specific Requests as follows:

Overview

Request No. 1

Plaintiff Quickie LLC ["Quickie"] is the owner by assignment of the Patent No. 6,066,160 issued on May 23, 2000 ["the '160 Patent"].

Response to Request No. 1

Admit.

Request No. 2

Exhibit A hereto is a true and correct copy of the Revocation of Prior Powers of Attorney dated March 4, 2003 [the "Revocation"] which Quickie filed with the United States Patent & Trademark Office ["the PTO"].

Response to Request No. 2

Deny, except admit that Exhibit A is an authentic copy of a document on file with the PTO.

Request No. 3

In the Revocation, Quickie revoked any authority that GT previously had as to the '160 Patent.

Response to Request No. 3

Deny.

Request No. 4

In the Revocation, Quickie appointed Robert Krebs and other attorneys at Thelen Reid & Priest [referred to collectively with its successor Thelen Reid Brown Raysman & Steiner LLP. as "Thelen"] as the new attorneys for Quickie with respect to the '160 Patent to "prosecute and transact all business" in the PTO.

Response to Request No. 4

Object. The Revocation speaks for itself.

Request No. 5

The Revocation listed Krebs and other Thelen attorneys (e.g. Marc Hanish, Adrienne Yeung, Hal Bohner, et al.) as replacement "attorney(s) and/or agent(s)" in place of GT for the '160 Patent.

Response to Request No. 5

Object. The Revocation speaks for itself.

Request No. 6

All persons listed at the bottom of page 1 of the Revocation are or were persons at Thelen.

Response to Request No. 6

Admit.

Request No. 7

Exhibit B hereto is a true and correct copy of the Notice Regarding Change of Power of Attorney [the "PTO Notice"] which the PTO sent to GT on April 2, 2003.

Response to Request No. 7

Deny, except admit that Exhibit B is an authentic copy of a document on file with the PTO.

Request No. 8

The PTO Notice states that the power of attorney previously given to GT as to the '160 Patent had been revoked by Quickie.

Response to Request No. 8

Object. The PTO Notice speaks for itself.

Request No. 9

The PTO Notice states that future correspondence will be mailed to the new address of record.

Response to Request No. 9

Object. The PTO Notice speaks for itself.

Request No. 10

The PTO Notice was sent to GT as Quickie's "former attorney/agent".

Response to Request No. 10

Object. The PTO Notice speaks for itself.

Request No. 11

Exhibit C hereto is a true and correct copy of the Supplement to Petition dated December 1, 2006 which was filed with the PTO by Quickie through its counsel Maier & Maier, PLLC in December 2006 ["the Supplement to Petition"].

Response to Request No. 11

Deny, except admit that Exhibit C is an authentic copy of a document on file with the PTO.

Request No. 12

Quickie authorized the filing of the Supplement to Petition.

Response to Request No. 12

Deny knowledge or information sufficient to form a belief as to the truth of the statement. The facts are within the exclusive possession of Quickie.

Request No. 13

Quickie reviewed the Supplement to Petition before it was filed with the PTO.

Response to Request No. 13

Deny knowledge or information sufficient to form a belief as to the truth of the statement. The facts are within the exclusive possession of Quickie.

Request No. 14

The statements in the Supplement to Petition are true and accurate.

Response to Request No. 14

Object. This Request is overbroad as to scope, and/or unduly burdensome and oppressive.

Request No. 15

The following statement in the Supplement to Petition is true and accurate:

"his [i.e. Todd Sharinn's] responsibility for the '160 Patent ended prior to the time period when the payment of a first maintenance fee was due".

Response to Request No. 15

Deny.

Request No. 16

The following statement in the Supplement to Petition is true and accurate:

"Thelen Reid & Priest was granted and held sole and full power in the '160 patent from March 4, 2003 through August 14, 2006".

Response to Request No. 16

Deny.

Request No. 17

The following statement in the Supplement to Petition is true and accurate:

"The Patent Owner [i.e. Quickie] fully believed that their valuable legal rights in the '160 patent would be justly protected by the attorneys and law firm of Thelen Reid & Priest when the Patent Owner chose them for representation and executed the Power of Attorney dated March 4, 2003".

Response to Request No. 17

Deny knowledge or information sufficient to form a belief as to the truth of the statement. The facts are within the exclusive possession of Quickie.

Request No. 18

The maintenance fee on the '160 Patent ["the Maintenance Fee"] first became due on May 23, 2003.

Response to Request No. 18

Admit.

Request No. 19

GT was no longer Quickie's attorney as to the '160 Patent when the Maintenance Fee first became due.

Response to Request No. 19

Deny.

Request No. 20

Thelen was Quickie's counsel as to the '160 Patent when the Maintenance Fee first became due.

Response to Request No. 20

Deny, except admit that Thelen was one of at least three law firms representing Quickie when the Maintenance Fee first became due.

Request No. 21

The Maintenance Fee was payable at any time during the one year period commencing May 23, 2003 and ending approximately May 23, 2004 ["the One-Year Period In Issue"].

Response to Request No. 21

Admit.

Request No. 22

GT was no longer Quickie's attorney as to the '160 Patent during the One-Year Period In Issue when the Maintenance Fee was due and could have been paid.

Response to Request No. 22

Deny.

Request No. 23

Thelen was Quickie's counsel during the One-Year Period In Issue when the Maintenance Fee was due and could have been paid.

Response to Request No. 23

Deny, except admit that Thelen was one of at least three law firms representing Quickie during the One-Year Period In Issue when the Maintenance Fee was due and could have been paid.

Request No. 24

Exhibit D hereto is a true and correct copy of the Statement in Support of Petition dated October 27, 2006 signed by Aubrey Galloway as the Managing Partner of Quickie which was filed with the PTO in 2006 ["the Statement in Support"].

Response to Request No. 24

Deny, except admit that Exhibit D is an authentic copy of a document on file with the PTO.

Request No. 25

The Statement in Support was made under the penalty of perjury pursuant to 18 U.S.C. 1001.

Response to Request No. 25

Object. The Statement in Support speaks for itself.

Request No. 26

The statements in the Statement in Support are true and accurate.

Response to Request No. 26

Deny knowledge or information sufficient to form a belief as to the truth of the statement. The facts are within the exclusive possession of Quickie.

Request No. 27

The following statement by Aubrey Galloway of Quickie in the Statement in Support is true and accurate:

“As the Managing Partner for Quickie, LLC, I retained Robert E. Krebs et al. of the Thelen, Reid & Priest, LLP law firm to transact all post-issuance proceedings and responsibilities in the Patent and Trademark Office including, but not limited to reexamination proceedings and timely payment of the maintenance fee”.

Response to Request No. 27

Deny.

Request No. 28

Exhibit E hereto is a true and correct copy of the Change of Attorney Docket Number and Change of Notice concerning the '160 Patent which was filed with the PTO by Thelen several months before the expiration of the One-Year Period In Issue.

Response to Request No. 28

Deny, except admit that Exhibit E is an authentic copy of a document on file with the PTO.

Further Background Facts

Request No. 29

Under applicable law and regulations, the owner of a patent must pay periodic maintenance fees to keep the patent in effect.

Response to Request No. 29

Admit.

Request No. 30

The first Maintenance Fee for the '160 Patent was due during the One-Year Period In Issue.

Response to Request No. 30

Admit.

Request No. 31

The Maintenance Fee for the '160 Patent could have been paid at any time during the One-Year Period In Issue.

Response to Request No. 31

Admit.

Request No. 32

The '160 Patent has now expired due to nonpayment of the Maintenance Fee which was due during the One-Year Period In Issue.

Response to Request No. 32

Admit.

Request No. 33

Rick, Steiner, Fell & Benowitz, LLP and in particular its partner Alan Fell [collectively "Rick Steiner"] was and is the general counsel and chief legal adviser for Quickie in all of its business dealings, including the '160 Patent, during the One-Year Period In Issue.

Response to Request No. 33

Admit.

Request No. 34

Rick Steiner had oversight and direct responsibility for assuring that the '160 Patent was maintained and kept extant.

Response to Request No. 34

Admit.

Request No. 35

Rick Steiner knew and was advised, prior to and during the One-Year Period In Issue that the maintenance fee would be due and had to be paid.

Response to Request No. 35

Admit.

Request No. 36

In 1998, Pepe & Hazard LLP, ["Pepe"] was engaged by Quickie to provide services in connection with the '160 Patent.

Response to Request No. 36

Admit.

Request No. 37

Thereafter, in 2001, Greenberg Traurig LLP ["GT"] was engaged to provide services concerning the '160 Patent.

Response to Request No. 37

Admit.

Request No. 38

Prior to mid-March 2003, Quickie replaced GT with Thelen as its attorneys with respect to all other aspects of the '160 Patent.

Response to Request No. 38

Deny.

Request No. 39

When it hired Thelen as to the '160 Patent, Quickie terminated GT's role, responsibility and services as to the '160 Patent.

Response to Request No. 39

Deny.

Request No. 40

Quickie had an opportunity to pay the Maintenance Fee during the One-Year Period In Issue when the Maintenance Fee was due.

Response to Request No. 40

Admit.

Request No. 41

Quickie had an opportunity to pay the Maintenance Fee after GT was no longer its attorney as to the '160 Patent and before the '160 Patent expired for non-payment of the Maintenance Fee.

Response to Request No. 41

Deny, except admit that Quickie had an opportunity to pay the Maintenance Fee before the '160 Patent expired for non-payment of the Maintenance Fee.

Request No. 42

Thelen had an opportunity to pay the Maintenance Fee or to advise Quickie to pay the Maintenance Fee before it was due.

Response to Request No. 42

Deny.

Request No. 43

Thelen had an opportunity to pay the Maintenance Fee or to advise Quickie to pay the Maintenance Fee during the One-Year Period In Issue when the Maintenance Fee was due.

Response to Request No. 43

Deny.

Request No. 44

Thelen had an opportunity to pay the Maintenance Fee or to advise Quickie to pay the Maintenance Fee before the '160 Patent expired for non-payment of the Maintenance Fee.

Response to Request No. 44

Deny.

Request No. 45

Rick Steiner had an opportunity to pay the Maintenance Fee or to advise Quickie to pay the Maintenance Fee before it was due.

Response to Request No. 45

Admit.

Request No. 46

Rick Steiner had an opportunity to pay the Maintenance Fee or to advise Quickie to pay the Maintenance Fee during the One-Year Period In Issue when the Maintenance Fee was due.

Response to Request No. 46

Admit.

Request No. 47

Rick Steiner had an opportunity to pay the Maintenance Fee or to advise Quickie to pay the Maintenance Fee before the '160 Patent expired for non-payment of the Maintenance Fee.

Response to Request No. 47

Admit.

Request No. 48

Quickie had opportunities to cure the nonpayment of the Maintenance Fee, or to advise Quickie to cure the nonpayment after the One-Year Period In Issue had expired on May 23, 2004, including when amendments were filed to the '160 Patent in 2005.

Response to Request No. 48

Admit.

Request No. 49

Thelen had opportunities to cure the nonpayment of the Maintenance Fee, or to advise Quickie to cure the nonpayment after the One-Year Period In Issue had expired on May 23, 2004, including when amendments were filed to the '160 Patent in 2005.

Response to Request No. 49

Deny.

Request No. 50

Rick Steiner had opportunities to cure the nonpayment of the Maintenance Fee, or to advise Quickie to cure the nonpayment after the One-Year Period In Issue had expired on May 23, 2004, including when amendments were filed to the '160 Patent in 2005.

Response to Request No. 50

Admit.

Dated: New York, New York
March 31, 2008

PROSKAUER ROSE LLP

By. 
Steven C. Krane

1585 Broadway
New York, NY 10036-8299
(212) 969-3435
skrane@proskauer.com
*Attorneys for Thelen Reid Brown
Raysman & Steiner LLP and Robert
E. Krebs*

TO:

Richard I. Janvey
Joan M. Secofsky
Diamond McCarthy, LLP
620 Eighth Avenue
39th Floor
New York, New York 10018
rjanvey@diamondmccarthy.com
jsecofsky@diamondmccarthy.com

Stephen T. Loden
Diamond McCarthy, LLP
Two Houston Center
909 Fannin, Suite 1500
Houston, Texas 77010
sloden@diamondmccarthy.com

Attorneys for Plaintiff

Martin I. Kaminsky
Justin Y. K. Chu
Pollack & Kaminsky
114 West 47th Street
New York, New York 10036
mikaminsky@pollacklawfirm.com
jchu@pollacklawfirm.com

Attorneys for Greenberg Traurig & Todd Sharinn

Pamela A. Bresnahan
Elizabeth Treubert Simon
Vorys, Sater, Seymour and Pease LLP
1828 L Street NW
Eleventh Floor
Washington, D.C. 20036-5109
pabresnahan@vssp.com
etsimon@vssp.com

Frank W. Ryan
Nixon Peabody LLP
437 Madison Avenue
New York, NY 10022
fryan@nixonpeabody.com

Attorneys for Rick, Steiner, Fell & Benowitz and Alan Fell

EXHIBIT K

Spiglanin, Patty

From: Ness, Andrew
 Sent: Wednesday, October 25, 2006 3:05 PM
 To: Blum, Robert
 Subject: FW: Revocation of power of Attorney & remarks & interview summary in merged reexam of 460 patent

Guess we know where he stands. I don't propose to respond further (since its only going to draw more of the same) unless you think otherwise.

Andy

-----Original Message-----

From: Mark F. Evens [mailto:MEVENS@skgf.com]
 Sent: Wednesday, October 25, 2006 4:51 PM
 To: Ness, Andrew
 Subject: RE: Revocation of power of Attorney & remarks & interview summary in merged reexam of 460 patent

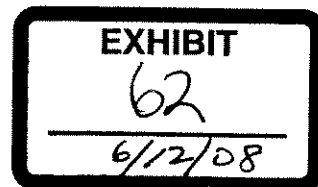
Thanks, Andy. I don't profess to be the expert, but my understanding at the time was that we (TRP) was taking responsibility for the patent, and that is how I read Bob's filing. Second, I remember a conversation early on with Bob about not missing fee deadlines. Finally, maintenance fees are part of representing the patent, so I am surprised that Bob, as a practiced patent prosecutor, wouldn't advise Quickie and Steve that deadlines were approaching so he would not lose his patent. To take the position that he only represented the patent on the Re-exam (which is not my memory or my reading of the document) seems unduly myopic. Bob constantly went around me to the client, and, under those circumstances, I just feel he would have advised the client that fees were due.

Anyway, I wanted you to have my thoughts.

Mark Fox Evens

for
 S. A. Kessler, Goldstein & Fox PLLC
 1100 New York Ave., NW
 Washington, DC 20005

202-772-8888 (direct)
 202-371-2540 (fax)
 202-371-2600 (reception)



From: Ness, Andrew [mailto:adness@thelenreid.com]
 Sent: Wednesday, October 25, 2006 2:14 PM
 To: Mark F. Evens
 Subject: RE: Revocation of power of Attorney & remarks & interview summary in merged reexam of 460 patent

Mark:

Thanks for the info. I looked over the documents you sent and have heard from Bob Krebs regarding them. Both documents relate only to the reexamination proceeding for the '160 patent. The Patent Office has very specific rules for registering as the fee address for maintenance fee purposes. Bob pointed me to 37 CFR 1.136 and 1.363 which govern this specifically, and you might want to look at them.

The fee address for maintenance fee purposes is where the PTO sends all notices and correspondence regarding maintenance fees, and its "the correspondence address used during prosecution of the application" unless specifically changed as provided in the regulations. TRP did not prosecute the patent application, and was never the fee address for maintenance fee purposes. TRP never received any of the maintenance fee notices or took on any responsibility for maintenance fees.

The fee address for maintenance fee purposes (per the PTO web site) is Pepe & Hazard, a law firm in Connecticut. Quickie should be looking in that direction if it wants to ask why the maintenance fee did not get paid and Quickie did not hear about it.

2/1/2007

T000758

I hope this is helpful.

Andy

-----Original Message-----

From: Mark F. Evens [mailto:MEVENS@skgf.com]

Sent: Tuesday, October 24, 2006 3:18 PM

To: Ness, Andrew

Subject: FW: Revocation of power of Attorney & remarks & interview summary in merged reexam of 460 patent

Andy,

A few weeks ago, I met to discuss the issue Quickie has with TRP regarding the '160 Patent. As we discussed, Dr. Colvin, on behalf of Quickie, LLC, our client while I was at TRP, was attempting to negotiate a settlement of the issues with Medtronic or sell the IP to a third party. Numbers bandied about exceeded \$5m.

Unfortunately, Medtronic and the 3/p pointed out that because maintenance fees were not paid, the '160 patent had expired. Fees were due on or about May 2004 and the final date was May 2006.

The attached documents show that TRP had responsibility for the patent, including paying maintenance fees or notifying Quickie that the fees were due.

Dr. Colvin tells me he never received such notice.

I know he is incurring significant sums in an effort to have the patent reinstated.

As you can imagine, Dr. Colvin is quite frustrated. Delay in the Patent Office delayed resolution of this matter. But with a resolution within reach (which would have resulted in payment of appropriate outstanding invoices), he found out that the patent had expired.

I wanted to advise you of the attached so appropriate action can be taken in this matter.

Hope all is going well otherwise.

Mark

Mark Fox Evens

Director

Sterne, Kessler, Goldstein & Fox PLLC

1100 New York Ave., NW

Washington, DC 20005

202-772-8888 (direct)

202-371-2540 (fax)

202-371-2600 (reception)

From: Sandra Ortiz [mailto:ortizs02@med.nyu.edu]

Sent: Tuesday, October 24, 2006 9:39 AM

To: Alan Fell; Mark F. Evens

Cc: akatz@vtsmedical.com; grossl@cv.med.nyu.edu; galloway@cv.med.nyu.edu

Subject: Revocation of power of Attorney & remarks & interview summary in merged reexam of 460 patent

Gentleman, FYI, Please see attachments

<<460 patent.pdf>> <<Krebbs POA.pdf>>

--
New York University School of Medicine

Department of Cardiothoracic Surgery

Sandra Ortiz Perez

Phone (212) 263-6273

Fax (212) 263-6546

2/1/2007

T000759

EXHIBIT L



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
 United States Patent and Trademark Office
 P.O. Box 1450
 Alexandria, VA 22313-1450
 www.uspto.gov

MAIER & MAIER, PLLC
 128 N. PITT STREET
 SECOND FLOOR
 ALEXANDRIA, VA 22314

COPY MAILED

MAR 06 2007

OFFICE OF PETITIONS

EXHIBIT

59
 6/12/08

In re Patent of :
 Colvin et al. :
 Patent No. 6,066,160 :
 Issue Date: 05/23/2000 :
 Application No 09/198087 : DECISION
 Filing or 371(c) Date: 11/23/1998 : ON PETITION
 Title of Invention: :
 PASSIVE KNOTLESS SUTURE :
 TERMINATOR FOR USE IN :
 MINAMALLY INVASIVE SURGERY AND :
 TO FACILITATE STANDARD TISSUE :
 SECURING :

This is a decision on the petition under 37 CFR § 1.378(b), to reinstate the above-identified patent, filed October 27, 2006, and supplemented December 4, 2006.

The petition is **DISMISSED**.

Any further petition to revive the above-identified application must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

Background

The patent issued May 23, 2000. Patentee could have paid the three and one half (3½) year maintenance fee between May 23, 2003, and November 23, 2003, without a surcharge, or within the six (6) month grace period between November 24, 2003 and May 23, 2004. Patentee failed to do so; accordingly, the patent became expired on May 24, 2004.

The instant petition

Patentee files the instant petition and explains that the law firm responsible for payment of the maintenance fee, Thelen, Reid & Priest, LLP, ("Thelen Reid"), failed to pay the maintenance fee.

Patent No. 6,066,160

Page 2

Petitioner asserts that this office also failed to Notify the Patentee that the maintenance fee was due, and that this office allowed the Patentee to file amendments in the above-identified reissue application during the period after the patent had become abandoned, without notifying the Patentee that the patent had expired.

Applicable Law, Rules and MPEP

37 CFR 1.378(b) provides that a patent may be reinstated at any time following expiration of the patent for failure to timely pay a maintenance fee. A petition to accept late payment of a maintenance fee, where the delay was unavoidable, must include:

- (A) the required maintenance fee set forth in 37 CFR 1.20(e)-(g);
- (B) the surcharge set forth in 37 CFR 1.20(i)(1); and
- (C) a showing that the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that the petition was filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent.

The required showing must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly. Furthermore, an adequate showing requires a statement by all persons with direct knowledge of the cause of the delay, setting forth the facts as they know them. Copies of all documentary evidence referred to in a statement should be furnished as exhibits to the statement. (Emphasis supplied).

As language in 35 U.S.C. § 41(c)(1) is identical to that in 35 U.S.C. § 133 (i.e., "unavoidable" delay), a late maintenance fee for the unavoidable delay standard is considered under the same standard for reviving an abandoned application under 35 U.S.C. § 133. See Ray v. Lehman, 55 F.3d 606, 608-09, 34 USPQ2d 1786, 1787 (Fed. Cir. 1995) (quoting In re Patent No. 4,409,763, 7 USPQ2d 1798, 1800 (Comm'r Pat. 1988), aff'd sub nom. Rydeen v. Quigg, 748 F. Supp. 900, 16 USPQ2d 1876 (D.D.C. 1990), aff'd, 937 F.2d 623 (Fed. Cir. 1991) (table), cert. denied, 502 U.S. 1075 (1992)). See MPEP § 711.03(c) for a general discussion of the "unavoidable" delay standard.

Because 35 U.S.C. § 41(c) requires the payment of fees at specified intervals to maintain a patent in force, rather than some response to a specific action by the Office under 35 U.S.C. § 133, a reasonably prudent person in the exercise of due care and diligence would have taken steps to ensure the timely payment of such maintenance fees. Ray, 55 F.3d at 609, 34 USPQ2d at 1788. That is, an adequate showing that the delay in payment of the maintenance fee at issue was "unavoidable" within the meaning of 35 U.S.C. § 41(c) and 37 CFR 1.378(b)(3) requires a showing of the steps taken to ensure the timely payment of the maintenance fees for this patent. Id. Thus, where the record fails to disclose that the patentee took reasonable steps, or discloses that the patentee took no steps, to ensure timely payment of the maintenance fee, 35 U.S.C. 41(c) and 37 CFR 1.378(b)(3) preclude acceptance of the delayed payment of the maintenance fee under 37 CFR 1.378(b).

Patent No. 6,066,160

Page 3

In view of the requirement to enumerate the steps taken to ensure timely payment of the maintenance fee, the patentee's lack of knowledge of the need to pay the maintenance fee and the failure to receive the Maintenance Fee Reminder does not constitute unavoidable delay. See Patent No. 4,409,763, *supra*. See also Final Rule entitled "Final Rules for Patent Maintenance Fees," published in the Federal Register at 49 Fed. Reg. 34716, 34722-23 (August 31, 1984), and republished in the Official Gazette at 1046 Off. Gaz. Pat. Office 28, 34 (September 25, 1984). Under the statutes and rules, the Office has no duty to notify patentees of the requirement to pay maintenance fees or to notify patentees when the maintenance fees are due. It is solely the responsibility of the patentee to assure that the maintenance fee is timely paid to prevent expiration of the patent. The lack of knowledge of the requirement to pay a maintenance fee and the failure to receive the Maintenance Fee Reminder will not shift the burden of monitoring the time for paying a maintenance fee from the patentee to the Office. Thus, evidence that despite reasonable care on behalf of the patentee and/or the patentee's agents, and reasonable steps to ensure timely payment, the maintenance fee was unavoidably not paid, could be submitted in support of an argument that the delay in payment was unavoidable.

Moreover, the Patent and Trademark Office must rely on the actions or inactions of duly authorized and voluntarily chosen representatives of the applicant, and applicant is bound by the consequences of those actions or inactions. Link v. Wabash, 370 U.S. 626, 633-34 (1962); Huston v. Ladner, 973 F.2d 1564, 1567, 23 USPQ2d 1910, 1913 (Fed. Cir. 1992); see also Haines v. Quigg, 673 F. Supp. 314, 317, 5 USPQ2d 1130, 1132 (D.N. Ind. 1987). Specifically, petitioner's delay caused by the actions or inactions of his voluntarily chosen representative does not constitute unavoidable delay within the meaning of 35 USC 133 or 37 CFR 1.137(a). Haines v. Quigg, 673 F. Supp. 314, 5 USPQ2d 1130 (D. Ind. 1987); Smith v. Diamond, 209 USPQ 1091 (D.D.C. 1981); Potter v. Dann, 201 USPQ 574 (D.D.C. 1978); Ex parte Murray, 1891 Dec. Comm'r Pat. 130, 131 (Comm'r Pat. 1891). In re Mattullath, 38 App. D.C. 497, 514-15 (1912)(quoting Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (1887)); see also Winkler v. Ladd, 221 F. Supp. 550, 552, 138 USPQ 666, 167-68 (D.D.C. 1963), *aff'd*, 143 USPQ 172 (D.C. Cir. 1963); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (1913).

Opinion

Initially it is noted that, as iterated *supra*, under the statutes and rules, the Office has no duty to notify patentees of the requirement to pay maintenance fees or to notify patentees when the maintenance fees are due. Accordingly, Patentee may not rely upon the failure to receive a maintenance fee reminder to justify unavoidable delay in paying the maintenance fee. It is solely the responsibility of the patentee to assure that the maintenance fee is timely paid to prevent expiration of the patent. The lack of knowledge of the requirement to pay a maintenance fee and the failure to receive the Maintenance Fee Reminder will not shift the burden of monitoring the time for paying a maintenance fee from the patentee to the Office. Moreover, a reasonably prudent person in the exercise of due care and diligence would have taken steps to ensure the timely payment of such maintenance fees that did not include receipt of maintenance fee reminders from this Office.

Similarly, that the Patentee was allowed to file amendments in the reexamination application after the patent had expired, and this Office failed to notify the Patentee that the patent had expired, does not amount to unavoidable delay. Applicant's assertion, that this Office failed to

Patent No. 6,066,160

Page 4

notify the Patentee that the patent had expired, does not shift the burden of monitoring the time for paying a maintenance fee from the patentee to the Office. It is solely the responsibility of the Patentee to assure that the maintenance fee is timely paid to prevent expiration of the patent. Moreover, the patent had expired on May 24, 2004. In addition, Applicant filed amendments in the re-examination application on January 11, and June 20, 2005, several months after the patent had expired. A showing of unavoidable delay must include a showing that the failure to pay the maintenance fee was unavoidable from the time the payment was due, May 24, 2004, through the filing of a grantable petition.

Patentee is also advised that a delay caused by the actions or inactions of Patentee's voluntarily chosen representative, does not constitute unavoidable delay. Patentee asserts that Thelen Reid was responsible for payment of the maintenance fee, but failed to pay the maintenance fee. Patentee, however, may not rely upon a delay caused by the actions or inactions of Thelen Reid to support an assertion that payment of the maintenance fee was unavoidable.

Patentee alleges that it reasonably relied upon Thelen Reid to provide timely payment of the maintenance fee. However, Thelen Reid indicated to Petitioner that they were not responsible for payment of the maintenance fees, but was only empowered to act in the Re-examination proceedings for this patent. October 26, 2006 Letter from Maier & Mairer, PLLC ("Maier"), to Pepe & Hazard LLP. Applicant has also filed copies of a letter from Thelen Reid to the patentee dated July 3, 2001, wherein Thelen Reid states that it was retained only to provide litigation services related to the Patentee against Medtronic, Inc. Patentee has not provided any evidence from Thelen Reid, supporting the assertion that Thelen Reid was responsible for payment of the maintenance fee.

Finally, the petition states that on March 4, 2003, Attorney Todd Sharinn was responsible for the patent until March 4, 2003. Subsequently, on December 5, 2003, Patentee filed a Change of Attorney Docket Number and Change of Address Notice, changing the correspondence address to that of Thelen Reid. Patentee has failed to account for the period of time between March 4, 2003, when attorney Sharrin's responsibility for the patent terminated, and December 5, 2003, when Patentee filed a Change of Attorney Docket Number and Change of Address Notice. Patentee has thus failed to account for the entire delay.

Conclusion

Patentee has failed to demonstrate that the failure to pay the maintenance fee was unavoidable. The petition is dismissed.

Petitioner's current options

I. Petitioner may file a request for reconsideration.

If reconsideration of this decision is desired, a petition for reconsideration must be filed within TWO (2) MONTHS from the mail date of this decision.¹ The petition for reconsideration should

¹ No extension of this two-month time limit can be granted under 37 CFR 1.136(a) or (b). This is not a final agency action within the meaning of 5 U.S.C. § 704.

Patent No. 6,066,160

Page 5

be entitled "Petition for Reconsideration under 37 CFR 1.378(b)." Any petition for reconsideration of this decision must be accompanied by a non-refundable petition fee of \$400 as set forth in 37 CFR 1.17(h).

After a decision on the petition for reconsideration, no further reconsideration or review of the matter will be undertaken by the Commissioner. Therefore, it is extremely important that petitioner supply any and all relevant information and documentation with his request for reconsideration. The Director's decision will be based solely on the administrative record in existence. Petitioner should remember that it is not enough that the delay was unavoidable; petitioner must prove that the delay was unavoidable. A petition will not be granted if petitioner provides insufficient evidence to 'show' that the delay was unavoidable. Therefore, if a request for reconsideration is filed, it must establish that the entire delay in the submission of the maintenance fee was unavoidable.

II. Petitioner may request a refund of the maintenance fee and surcharge which accompanied the petition.

Petitioner may request a refund of the maintenance fee and surcharge by writing to the Office of Finance, Refund Section, Director for Patents, Washington, DC, 20231. A copy of this decision should accompany petitioner's request.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITIONS
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

By FAX: (571) 273-0025
Attn: Office of Petitions

By hand: Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232.

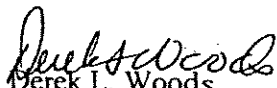

Derek L. Woods
Attorney
Office of Petitions

EXHIBIT M



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

MAIER & MAIER, PLLC
128 N. PITT STREET
SECOND FLOOR
ALEXANDRIA, VA 22314

EXHIBIT

60

6/12/08

COPY MAILED

OCT 05 2007

OFFICE OF PETITIONS

In re Patent of :
Colvin et al. :
Patent No. 6,066,160 :
Issue Date: 05/23/2000 :
Application No 09/198087 : DECISION
Filing or 371(c) Date: 11/23/1998 : ON PETITION
Title of Invention: :
PASSIVE KNOTLESS SUTURE :
TERMINATOR FOR USE IN :
MINAMALLY INVASIVE SURGERY AND :
TO FACILITATE STANDARD TISSUE :
SECURING :

This is a decision on the petition for reconsideration under 37 CFR § 1.378(e), to reinstate the above-identified patent, filed May 7, 2007.

The petition is **DENIED**.

Background

The patent issued May 23, 2000. Patentee could have paid the three and one half (3½) year maintenance fee between May 23, 2003, and November 23, 2003, without a surcharge, or within the six (6) month grace period between November 24, 2003 and May 23, 2004. Patentee failed to do so; accordingly, the patent became expired on May 24, 2004.

The October 27, 2006, Petition, supplemented December 4, 2006

Patentee filed a petition to reinstate the above-identified patent on October 27, 2006, and supplemented December 4, 2006, wherein Petitioner explained that the law firm responsible for payment of the maintenance fee, Thelen, Reid & Priest, LLP, ("Thelen Reid"), failed to pay the maintenance fee. Petitioner also asserted that this Office also failed to Notify the Patentee that the maintenance fee was due, and that this office allowed the Patentee to file amendments in the above-identified reissue application during the period after the patent had become expired, without notifying the Patentee that the patent had expired.

Patent No. 6,066,160

Page 2

The March 6, 2007 Decision dismissing the petition

A Decision dismissing the petition was mailed on March 6, 2007. The Decision informed Petitioner that the Office has no duty to notify patentees of the requirement to pay maintenance fees or to notify patentees when the maintenance fees are due, and that the lack of knowledge of the requirement to pay a maintenance fee and the failure to receive the Maintenance Fee Reminder will not shift the burden of monitoring the time for paying a maintenance fee from the patentee to the Office.

The Decision also informed Petitioner that a delay caused by the actions or inactions of Patentee's voluntarily chosen representative, does not constitute unavoidable delay. Patentee asserted that Thelen Reid was responsible for payment of the maintenance fee, but failed to pay the maintenance fee. Patentee was informed that it may not rely upon a delay caused by the actions or inactions of Thelen Reid to support an assertion that payment of the maintenance fee was unavoidable.

Finally, the Decision noted that Attorney Todd Sharinn was responsible for the patent until March 4, 2003. Subsequently, on December 5, 2003, Patentee filed a "Change of Attorney Docket Number and Change of Address Notice," changing the correspondence address to that of Thelen Reid. Patentee has failed to account for the period of time between March 4, 2003, when attorney Sharrin's responsibility for the patent terminated, and December 5, 2003, when Patentee filed the "Change of Attorney Docket Number and Change of Address Notice." Patentee had thus failed to account for the entire delay.

The present petition for reconsiderationPreliminary issues

Petitioner files the present petition for reconsideration and initially requests clarification as to whether the renewed petition may be filed under 37 CFR 1.137 or 1.378(b), and whether extensions of time are available?

Petitioner is advised that, as language in 35 U.S.C. § 41(c)(1) is identical to that in 35 U.S.C. § 133 (i.e., "unavoidable" delay), a late maintenance fee for the unavoidable delay standard is considered under the same standard for reviving an abandoned application under 35 U.S.C. § 133. See *Ray v. Lehman*, 55 F.3d 606, 608-09, 34 USPQ2d 1786, 1787 (Fed. Cir. 1995) (quoting *In re Patent No. 4,409,763*, 7 USPQ2d 1798, 1800 (Comm'r Pat. 1988), *aff'd sub nom. Rydeen v. Quigg*, 748 F. Supp. 900, 16 USPQ2d 1876 (D.D.C. 1990), *aff'd*, 937 F.2d 623 (Fed. Cir. 1991) (table), *cert. denied*, 502 U.S. 1075 (1992)). See MPEP § 711.03(c) for a general discussion of the "unavoidable" delay standard. Regarding whether extensions of time were available, the applicable rule, 37 CFR 1.378(e), states:

Reconsideration of a decision refusing to accept a maintenance fee upon petition filed pursuant to paragraph (a) of this section may be obtained by filing a petition for reconsideration within two months of, or such other time as set in the decision refusing to accept the delayed payment of the maintenance fee.

Patent No. 6,066,160

Page 3

The Decision set a two (2) month period for reply, and Petitioner timely filed the present request for reconsideration.

Petitioner also takes issue with the statement in the petition that the showing of unavoidable delay must include the showing from the time the payment was due, May 24, 2004, through the filing of a grantable petition. Petitioner asserts that May 24, 2004 was the date that the patent expired, not the date that the payment was due. Petitioner asserts that the error in the citing of the significance of these dates renders the entire decision subject to question.

As Petitioner correctly notes, May 24, 2004 was the date that the patent expired. Petitioner is advised that, had the payment been received on May 23, 2004, the patent would not have expired. While the three and one-half (3½) year maintenance fee due date is the date the maintenance fee is to be paid, this Office extends a six (6) month grace period such that the patent does not expire until six (6) months after the due date. "Unless payment of the applicable maintenance fee is received in the United States Patent and Trademark Office on or before the date the fee is due or within a grace period of 6 months thereafter, the patent will expire as of the end of such grace period." See 35 U.S.C. § 41(b)

Further to this, 37 CFR 1.378, Acceptance of delayed payment of maintenance fee in expired patent to reinstate patent, states:

(a) The Director may accept the payment of any maintenance fee due on a patent after expiration of the patent if, upon petition, the delay in payment of the maintenance fee is shown to the satisfaction of the Director to have been unavoidable (paragraph (b) of this section) or unintentional (paragraph (c) of this section) and if the surcharge required by § 1.20(i) is paid as a condition of accepting payment of the maintenance fee.

Finally, 37 CFR 1.137, Revival of abandoned application, terminated reexamination proceeding, or lapsed patent, states in relevant part that the showing required must include (a) (3) A showing to the satisfaction of the Director that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable;

Accordingly, the showing of unavoidable delay required under 37 CFR 1.378(b) runs from the due date for the reply – the day after which the patent is expired - to the filing of a grantable petition.

Petitioner next disagrees with the Decision's conclusion that Sharinn's responsibility concluded on March 4, 2003, and that there is no objective evidence to support this conclusion.

A review of the Supplement to Petition filed December 24, 2006 reveals that Petitioner herein filed a Statement in Support of Petition Under 37 C.F.R. 1.378(b) executed by Todd Sharinn wherein Mr. Sharinn states on page two that

[m]y responsibility, including the payment of any maintenance fee that may become due, for the subject patent ended prior to the date where payment of a first maintenance fee was due as evidenced by the enclosed Revocation of Prior Powers of Attorney signed on

Patent No. 6,066,160

Page 4

the behalf of Quickie, LLC, on March 4, 2003 wherein 'all powers of attorney previously given [were] hereby revoked.'

Statement of Mr. Sharinn at p.2.

The patent expired on March 24, 2004. The relevant period is the period between March 24, 2004 and the filing of a grantable petition.

The response to the Decision

As to the Decision, Petitioner states that the delay was unavoidable because at all relevant times, Thelen held Petitioner's general power of attorney and Greenberg/Sharinn were the designated recipients of all office communications concerning maintenance fees on the '160 Patent. In light of these facts, Petitioner states that "it is self-evident that Petitioner was reasonably looking to its outside counsel to handle maintenance fees on the patent, and thus the failure to pay the maintenance fees was unavoidable to petitioner." Request for Reconsideration at p.4.

Petitioner asserts that the responsibility to present a complete record due to the failure to obtain the client files and other documents related to the representation of his client Thelen and Greenberg fall squarely at the feet of Thelen and Greenberg. Petitioner requests, at a minimum, additional time to produce documents from Thelen and Greenberg.

Applicable Law, Rules and MPEP

37 CFR 1.378(b) provides that a patent may be reinstated at any time following expiration of the patent for failure to timely pay a maintenance fee. A petition to accept late payment of a maintenance fee, where the delay was unavoidable, must include:

- (A) the required maintenance fee set forth in 37 CFR 1.20(e)-(g);
- (B) the surcharge set forth in 37 CFR 1.20(i)(1); and
- (C) a showing that the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that the petition was filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent.

The required showing must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly. Furthermore, an adequate showing requires a statement by all persons with direct knowledge of the cause of the delay, setting forth the facts as they know them. Copies of all documentary evidence referred to in a statement should be furnished as exhibits to the statement. (Emphasis supplied).

As language in 35 U.S.C. § 41(c)(1) is identical to that in 35 U.S.C. § 133 (i.e., "unavoidable" delay), a late maintenance fee for the unavoidable delay standard is considered under the same standard for reviving an abandoned application under 35 U.S.C. § 133. See Ray v. Lehman, 55 F.3d 606, 608-09; 34 USPQ2d 1786, 1787 (Fed. Cir. 1995) (quoting In re Patent No. 4,409,763, 7 USPQ2d 1798, 1800 (Comm'r Pat. 1988), aff'd sub nom. Rydeen v. Quigg, 748 F. Supp. 900,

Patent No. 6,066,160

Page 5

16 USPQ2d 1876 (D.D.C. 1990), *aff'd*, 937 F.2d 623 (Fed. Cir. 1991) (table), cert. denied, 502 U.S. 1075 (1992)). See MPEP § 711.03(c) for a general discussion of the "unavoidable" delay standard.

Because 35 U.S.C. § 41(c) requires the payment of fees at specified intervals to maintain a patent in force, rather than some response to a specific action by the Office under 35 U.S.C. § 133, a reasonably prudent person in the exercise of due care and diligence would have taken steps to ensure the timely payment of such maintenance fees. Ray, 55 F.3d at 609, 34 USPQ2d at 1788. That is, an adequate showing that the delay in payment of the maintenance fee at issue was "unavoidable" within the meaning of 35 U.S.C. § 41(c) and 37 CFR 1.378(b)(3) requires a showing of the steps taken to ensure the timely payment of the maintenance fees for this patent. Id. Thus, where the record fails to disclose that the patentee took reasonable steps, or discloses that the patentee took no steps, to ensure timely payment of the maintenance fee, 35 U.S.C. 41(c) and 37 CFR 1.378(b)(3) preclude acceptance of the delayed payment of the maintenance fee under 37 CFR 1.378(b).

In view of the requirement to enumerate the steps taken to ensure timely payment of the maintenance fee, the patentee's lack of knowledge of the need to pay the maintenance fee and the failure to receive the Maintenance Fee Reminder does not constitute unavoidable delay. See Patent No. 4,409,763, *supra*. See also Final Rule entitled "Final Rules for Patent Maintenance Fees," published in the Federal Register at 49 Fed. Reg. 34716, 34722-23 (August 31, 1984), and republished in the Official Gazette at 1046 Off. Gaz. Pat. Office 28, 34 (September 25, 1984). Under the statutes and rules, the Office has no duty to notify patentees of the requirement to pay maintenance fees or to notify patentees when the maintenance fees are due. It is solely the responsibility of the patentee to assure that the maintenance fee is timely paid to prevent expiration of the patent. The lack of knowledge of the requirement to pay a maintenance fee and the failure to receive the Maintenance Fee Reminder will not shift the burden of monitoring the time for paying a maintenance fee from the patentee to the Office. Thus, evidence that despite reasonable care on behalf of the patentee and/or the patentee's agents, and reasonable steps to ensure timely payment, the maintenance fee was unavoidably not paid, could be submitted in support of an argument that the delay in payment was unavoidable.

Moreover, the Patent and Trademark Office must rely on the actions or inactions of duly authorized and voluntarily chosen representatives of the applicant, and applicant is bound by the consequences of those actions or inactions. Link v. Wabash, 370 U.S. 626, 633-34 (1962); Huston v. Ladner, 973 F.2d 1564, 1567, 23 USPQ2d 1910, 1913 (Fed. Cir. 1992); see also Haines v. Quigg, 673 F. Supp. 314, 317, 5 USPQ2d 1130, 1132 (D.N. Ind. 1987). Specifically, petitioner's delay caused by the actions or inactions of his voluntarily chosen representative does not constitute unavoidable delay within the meaning of 35 USC 133 or 37 CFR 1.137(a). Haines v. Quigg, 673 F. Supp. 314, 5 USPQ2d 1130 (D. Ind. 1987); Smith v. Diamond, 209 USPQ 1091 (D.D.C. 1981); Potter v. Dann, 201 USPQ 574 (D.D.C. 1978); Ex parte Murray, 1891 Dec. Comm'r Pat. 130, 131 (Comm'r Pat. 1891). In re Mattullath, 38 App. D.C. 497, 514-15 (1912)(quoting Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (1887)); see also Winkler v. Ladd, 221 F. Supp. 550, 552, 138 USPQ 666, 167-68 (D.D.C. 1963), *aff'd*, 143 USPQ 172 (D.C. Cir. 1963); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (1913).

Patent No. 6,066,160

Page 6

Opinion

Petitioner/Patentee is advised that it is immaterial to reinstatement of the patent as to whether the actions or inactions of Thelen, Greenberg, Sharinn, or any other voluntarily chosen representative of the Patentee resulted in the failure to timely pay the maintenance fee. A delay caused by the actions or inactions of Patentee's voluntarily chosen representative, does not constitute unavoidable delay. Patentee may not rely upon a delay caused by the actions or inactions of a voluntarily chosen representative to support an assertion that payment of the maintenance fee was unavoidable. As the court stated in Haines v. Quigg, 673 F. Supp. 314, 317, 5 USPQ2d 1130, 1132 (D.N. Ind. 1987), Plaintiff

cannot, however, ask the court to overlook Attorney Knoblock's action or inaction with regard to the patent application. He hired Knoblock to represent him; Knoblock's actions must be imputed to him. *Link v. Wabash Railroad Co.*, 370 U.S. 626, 633-34, 82 S. Ct. 1386, 1390-91, 8 L. Ed. 2d 734 (1962) ("Petitioner voluntarily chose his attorney as his representative in the action and he cannot now avoid the consequences of the acts or omissions of this freely selected agent Each party is deemed bound by the acts of his lawyer-agent and is considered to have 'notice of all facts, notice of which can be charged upon the attorney.'"); *Inryco, Inc. v. Metropolitan Engineering Co., Inc.*, 708 F.2d 1225, 1233 (7th Cir. 1983) ("Courts hesitate to punish a client for its lawyer's gross negligence, especially when the lawyer affirmatively misled the client," but "if the client freely chooses counsel, it should be bound to counsel's actions."). See also, e.g., *Wei v. State of Hawaii*, 763 F.2d 370, 372 (9th Cir. 1985); *LeBlanc v. I.N.S.*, 715 F.2d 685, 694 (1st Cir. 1983).

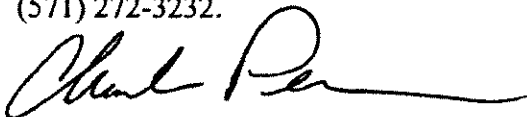
Lastly, as to Petitioners request for, at a minimum, additional time to produce documents from Thelen and Greenberg Petitioner is advised that, as stated in 37 CFR 1.378(e), "[a]fter the decision on the petition for reconsideration, no further reconsideration or review of the matter will be undertaken by the Director."

Decision

The instant petition under 37 CFR 1.378(e) is granted to the extent that the decision of March 6, 2007 has been reconsidered; however, the renewed petition to accept under 37 CFR 1.378(e) the delayed payment of a maintenance fee and reinstate the above-identified patent is **DENIED**.

This patent file is being forwarded to the Files Repository.

Telephone inquiries concerning this matter should be directed to Attorney Derek L. Woods at (571) 272-3232.



Charles Pearson
Director
Office of Petitions

EXHIBIT N



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
 United States Patent and Trademark Office
 Address: COMMISSIONER FOR PATENTS
 P.O. Box 1450
 Alexandria, Virginia 22313-1450
 www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

90/006,460

11/25/2002

6066160

034521-003

3789

al 90/007085

7590

02/21/2008

Robert E. Krebs
 Thelen Reid & Priest LLP
 P.O. Box 640640
 San Jose, CA 95164-0640

RECEIVED
 FEB 25 2008
 TRBRS LLP
 Patent Docket

EXAMINER

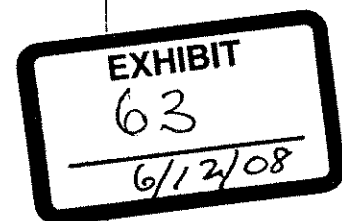
WOO

ART UNIT	PAPER NUMBER
----------	--------------

3773

DATE MAILED: 02/21/2008

Please find below and/or attached an Office communication concerning this application or proceeding.





UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
 United States Patent and Trademark Office
 Address: COMMISSIONER FOR PATENTS
 P.O. Box 1450
 Alexandria, Virginia 22313-1450
 www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
90/006,460 <i>and 90/007,085</i>	11/25/2002	6066160	034521-003	3789
7590	02/21/2008			
Robert E. Krebs Thelen Reid & Priest LLP P.O. Box 640640 San Jose, CA 95164-0640				
			EXAMINER	
			WOOD	
			ART UNIT	PAPER NUMBER
			3773	

DATE MAILED: 02/21/2008

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action in Ex Parte Reexamination	Control No. 90/006,460 <i>and 90/067085</i>	Patent Under Reexamination 6066160	
	Examiner Julian W. Woo	Art Unit 3773	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

a ☒ Responsive to the communication(s) filed on 05 October 2007. b ☐ This action is made FINAL.

c ☐ A statement under 37 CFR 1.530 has not been received from the patent owner.

A shortened statutory period for response to this action is set to expire 2 month(s) from the mailing date of this letter. Failure to respond within the period for response will result in termination of the proceeding and issuance of an *ex parte* reexamination certificate in accordance with this action. 37 CFR 1.550(d). EXTENSIONS OF TIME ARE GOVERNED BY 37 CFR 1.550(c). If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

1. <input type="checkbox"/> Notice of References Cited by Examiner, PTO-892.	3. <input type="checkbox"/> Interview Summary, PTO-474.
2. <input type="checkbox"/> Information Disclosure Statement, PTO/SB/08.	4. <input type="checkbox"/> _____

Part II SUMMARY OF ACTION

1a. ☒ Claims 1-34 are subject to reexamination.

1b. ☐ Claims _____ are not subject to reexamination.

2. ☐ Claims _____ have been canceled in the present reexamination proceeding.

3. ☒ Claims 26 and 30 are patentable and/or confirmed.

4. ☒ Claims 1-25, 27-29 and 31-34 are rejected.

5. ☐ Claims _____ are objected to.

6. ☐ The drawings, filed on _____ are acceptable.

7. ☐ The proposed drawing correction, filed on _____ has been (7a) ☐ approved (7b) ☐ disapproved.

8. ☐ Acknowledgment is made of the priority claim under 35 U.S.C. § 119(a)-(d) or (f).

a) ☐ All b) ☐ Some* c) ☐ None of the certified copies have

1 ☐ been received.

2 ☐ not been received.

3 ☐ been filed in Application No. _____.

4 ☐ been filed in reexamination Control No. _____.

5 ☐ been received by the International Bureau in PCT application No. _____.

* See the attached detailed Office action for a list of the certified copies not received.

9. ☐ Since the proceeding appears to be in condition for issuance of an *ex parte* reexamination certificate except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte* Quayle, 1935 C.D. 11,453 O.G. 213.

10. ☐ Other: _____

cc: Requester (if third party requester)

Application/Control Number: 90/006,460 and
90/007,085
Art Unit: 3773

Page 2

DETAILED ACTION

Reexamination

1. In view of the October 5, 2007 decision to deny reinstatement of U.S. Patent 6,066,160, further reexamination of this patent will be on unamended patent claims 1-34 only. All amendments to the patent claims and all claims that were added during the proceeding are withdrawn. Any response to this office action should include an amendment presenting claims 1-34 as originally issued or canceled and canceling all other claims. See MPEP 2250(III) and 2287(IV)(M).
2. The patent owner is reminded of the continuing responsibility under 37 CFR 1.565(a), to apprise the Office of any litigation activity, or other prior or concurrent proceeding, involving Patent No. 6,066,160 throughout the course of this reexamination proceeding. See MPEP §§ 2207, 2282 and 2286.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-12, 32, and 34 are rejected under 35 U.S.C. 102(b) as being anticipated by Emery (3,988,810). Emery discloses, in the figures, a suture securing apparatus comprising an apparatus body having an upper surface (e.g., at 26), a lower surface (23); a first internal surface (at 25); a second internal surface (at 24) at an acute angular narrowing (with respect to the axis running along the suture shown in figure 3 or 7), an

Application/Control Number: 90/006,460 and
90/007,085
Art Unit: 3773

Page 3

outer surface (27 or 28), first and second apertures that are mirror images of each other (see fig. 7), and an integral locking means comprising at least one ridge (30 or 41), where each aperture has longitudinal and latitudinal axes (located along and/or between the first and second internal surfaces) facilitating longitudinal and latitudinal directions for a suture (T), where each aperture has a length, where at least a portion of the locking means extends along the length of an aperture (rather than the *entire* length of an aperture), where each ridge is formed of a rigid, biocompatible NYLON material (see col. 1, lines 19-23, for its use in wearing apparel, and col. 3, lines 9-11) and has a rounded surface farthest from the aperture surface (see figures 3 and 4), where each ridge is formed at an angle greater than about 30 deg. or at an angle of about 45 deg. (see col. 2, lines 9-15).

5. Claims 13 and 18-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Richardson (1,243,105). Richardson discloses, in figures 2-4 and 6, a suture securing apparatus with an apparatus body having an upper surface (left side of the body as viewed in fig. 6), a lower surface (right side of the body as viewed in fig. 6), an outer surface (e.g., at 18), first and second apertures (a) each with a longitudinal axis and upper, middle and lower portions as claimed; and first and second movable, serrated cam members (10a) captured in the middle portion of each of the first and second apertures; where each cam member has an engagement end and a rotation end (at 12) or rounded portion, the rotation end being wider than the widths of the upper and lower portions of the aperture; where a cavity of an aperture has a rounded portion (13) cooperating with the rounded portion of the cam member and includes a retaining wall

Application/Control Number: 90/006,460 and
90/007,085
Art Unit: 3773

Page 4

(to the left or right of 13 as viewed in fig. 2); where each cam member moves to an unengaged position (with a suture) in a first longitudinal direction and an engaged position in a second longitudinal direction; and where the first and second apertures and the first and second cam members are mirror images of each other.

6. Claim 33 is rejected under 35 U.S.C. 102(b) as being anticipated by Creager (536,684). Creager discloses, in the figures, a suture securing apparatus with an apparatus body (A), first and second apertures (F) each with a longitudinal axis and a cavity (J), and first and second movable cam members (B) in the apertures; where the first and second apertures and the first and second cam members are mirror images of each other, as defined by a mirror plane equidistant from them.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Application/Control Number: 90/006,460 and
90/007,085
Art Unit: 3773

Page 5

8. Claims 14-17, 22, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Richardson (1,243,105) in view of Plante (5,070,805). Richardson discloses the invention substantially as claimed, where the invention can be "used in various ways" as chosen by a user. However, Richardson does not disclose that the middle portion of the aperture comprises ridges, and that the apparatus is made from elastic, rigid, biocompatible, or biodegradable materials. Plante teaches a suture securing apparatus, in col. 1, lines 35-42, where, depending on the application for the apparatus, the apparatus can be made of cast metal or plastic. In figures 2 and 3, Plante teaches a middle portion of an aperture that has ridges (48). Plante also teaches, in figure 3, that the apparatus is attached to an unspecified surface (53). Thus, it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the apparatus, or parts thereof, from materials as claimed, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. It also would be obvious to one having ordinary skill in the art at the time the invention was made, in view of Plante, to include ridges in the middle portion of an aperture of the device of Richardson. Such ridges would aid in the better securement of a suture retained by Richardson's device.

9. Claims 24, 25, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Emery (3,988,810) in view of Samuels et al. (3,976,079). Emery discloses the invention substantially as claimed, but does not disclose a medical

Application/Control Number: 90/006,460 and
90/007,085
Art Unit: 3773

Page 6

prosthesis device in physical contact or engagement or integrally formed with the suture securing apparatus. Samuels et al. teach, in figures 3 and 9, a suture securing apparatus (34) for temporary, physical contact or engagement or integral formation with a medical prosthesis device (40). It would have been obvious to one having ordinary skill in the art at the time the invention was made to apply the apparatus of Emery with the medical prosthesis device of Samuels et al. The apparatus of Emery would conveniently allow quick suture securement to the prosthesis device (and quick release of the suture from prosthesis device) with the advantage of a one-piece design, where there are no additional parts to operate or lose as in the device of Samuels et al.

10. Claims 28, 29, and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Richardson (1,243,105) in view of Samuels et al. (3,976,079).

Richardson discloses the invention substantially as claimed, where the invention can be "used in various ways" as chosen by a user. Moreover, Richardson discloses that "further or others uses and modifications of the device in detailed construction or otherwise will suggest themselves to the skilled mechanic, and the invention may be changed or modified in details or design." However, Richardson does not disclose that the apparatus contacts or engages a medical prosthesis device. Samuels et al. teach, in figures 3 and 9, a suture securing apparatus (34) for temporary, physical contact or engagement or integral formation with a medical prosthesis device (40). It would have been obvious to one having ordinary skill in the art at the time the invention was made to apply the apparatus of Richardson with the medical prosthesis device of Samuels et al. The apparatus of Richardson would conveniently allow quick suture securement to

Application/Control Number: 90/006,460 and
90/007,085
Art Unit: 3773

Page 7

the prosthesis device (and quick release of the suture from prosthesis device) with the advantage that the Richardson apparatus does not have additional small parts that can be lost during use as in the device of Samuels et al.

Patentable and/or Confirmed Subject Matter

11. Claims 26 and 30 are patentable and/or confirmed.
12. The following is a statement of reasons for the indication of patentable and/or confirmed subject matter: None of the prior art of record, alone or in combination discloses a securable medical prosthesis device comprising a securable medical prosthesis device with, inter alia, a medical prosthesis device and a suture securing apparatus comprising an apparatus body having an upper surface, a lower surface, a first internal surface, a second internal surface, an outer surface, at least one aperture, and a movable cam member or a locking means comprising at least one ridge; and where the medical prosthesis device is a sewing ring implant.

Conclusion

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Julian W. Woo whose telephone number is (571) 272-4707. The examiner can normally be reached Mon.-Fri., 7:00 AM to 3:00 PM Eastern Time, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on (571) 272-4696. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Application/Control Number: 90/006,460 and
90/007,085
Art Unit: 3773

Page 8

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Julian W. Woo/
Primary Examiner, Art Unit 3773

February 20, 2008

EXHIBIT O

OPER PC ENTERED 8/9/2002 MODIFIED 7/10/2003 ATTORNEYS PJS / TSS / ADR PRINTED ON: 8/14/2007

ST# 51822.010700US CNTRY US UNITED STATES NEW/CON NEW RELATED

*ATS# P15275US0 TYPE UTL SERIAL# 90/006,460 PATENT# 6,066,160 STAT TRANSFER

TITLE Passive Knotless Suture Terminator for Use in Minimally Invasive Surgery and to Facilitate Standard Tissue Securing CONF#

CLIENT 51822 Quickie, LLC 1 CREF SE YE PUBL#

AGENT AREF 09/198,087 CLAIMS OLD#

*RIOR 11/23/1998 MAIL 11/23/1998 FILE 11/25/2002 PUBL ISSUE 5/23/2000 TFD y 4/2/2003 1ST 11/23/1998

ID	O	ACTION	BASE	DUE IN	DUE	EXTNS	FINAL	EXT	RESPONSE	CALL	1	2	P
	Y	POA REVOKED	4/2/2003										
M1	N	1ST MAINT FEE DUE	5/23/2000	42M	11/23/2003	16	5/23/2004	0	4/2/2003	6M	Y	Y	Y
M2	N	2ND MAINT FEE DUE	5/23/2000	90M	11/23/2007	16	5/23/2008	0	4/2/2003	6M	Y	Y	Y
M3	N	3RD MAINT FEE DUE	5/23/2000	138M	11/23/2011	16	5/23/2012	0	4/2/2003	6M	Y	Y	Y

This application has been transferred to another firm (unknown).

INVENTORS

Colvin, Stephen B.

Gross, Eugene

Katz, Alan

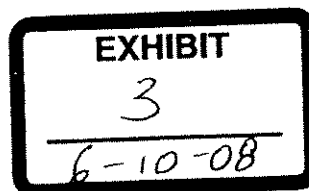
Oddo, Paul

ASSIGNEES

Quickie LLC

NOTES

request for Ex-Parte Reexamination is granted. The previous ser.# is 09/198,067, with file date of 11/23/98.



GT 0001019

EXHIBIT P

Patent Record Sheet

Docket ID	051822-010700/US	Other Party	<input type="checkbox"/>
Alternative ID		File Reference	
Patentee/Assignees	Quickie, LLC	Client/Business Units	Quickie, LLC
Cost Centres		Attorneys	Jacobs Albert L., Tropper Matthew B.
Inventors	Katz Alan, Grossi Eugene, Oddo Paul, Colvin Stephen B.	Office	New York
Country	United States of America	Prosecuting/Admin Agent	
Short Title	Passive Knotless Suture Terminator for Use in Minimally Invasive Surgery and to Facilitate Standard Tissue Securing	Representative Agent	
		Tax Receiver / Patent Office	
Convention	Priority	Application No	90/006,460
Origin		Application Date	25-Nov-2002
Type	Patent	Grant No	6,066,160
Sub Type	Non-provisional application	Grant Date	23-May-2000
Status	Inactive	Independent Claims	
Sub Status	Transferred	Number of Dependent Claims	
		Number of Multiple Dependent Claims	
License of Right	<input type="checkbox"/>	Small Entity	<input checked="" type="checkbox"/>
		File Status Inactive	
		Annuity Instructions	
Claimed Priorities & Parent Records			
Relation	Docket ID	Date	No
Priority	051822-010700/US/	11/23/1998	<input checked="" type="checkbox"/>
Long Title			
Abstract Summary			
Memo	Per phone conference with Al Jacobs on 4/18/06, he has taken responsibility for clients that Todd Sharinn worked on. NOTE : Request for Ex-Parte Reexamination is granted. The previous ser.# is 09/198,067, with file date of 11/23/98.		
International Classes			
National Classes			
Keywords			
Utilizations			
Technology Areas			
Prior Art			
Literature			



Patent Record Sheet

Patents/Inventions

Related Cases

Diary

Docketed	Action / Event Memo	Recorded No	Reminder	Due	Done/Record	Resp Party
09-Aug-2002	Priority Date				23-Nov-1998	
09-Aug-2002	Mailed Date				23-Nov-1998	
09-Aug-2002	Grant Date	6,066,160			23-May-2000	
09-Aug-2002	Application Date	90/006,460			25-Nov-2002	
09-Aug-2002	Expiration Date				02-Apr-2003	
	POA REVOKED				02-Apr-2003	TSS
	3.5 Tax Due			23-Nov-2003	02-Apr-2003	TSS
	Base Date: 5/23/2000 Old Action; 1ST MAINT FEE DUE					
	1ST MAINT FEE DUE - Final			23-May-2004	02-Apr-2003	TSS
	Base Date: 5/23/2000					
	2ND MAINT FEE DUE			23-Nov-2007	02-Apr-2003	TSS
	Base Date: 5/23/2000					
	2ND MAINT FEE DUE - Final			23-May-2008	02-Apr-2003	TSS
	Base Date: 5/23/2000					
	3RD MAINT FEE DUE			23-Nov-2011	02-Apr-2003	TSS
	This application has been transferred to another firm (unknown).					
	Base Date: 5/23/2000					
	3RD MAINT FEE DUE - Final			23-May-2012	02-Apr-2003	TSS
	This application has been transferred to another firm (unknown).					
	Base Date: 5/23/2000					

Date created 09-Aug-2002

Created by PC

Date Amended 25-Oct-2006

Updated by CORDESP

Document Management System (DMS)

EXHIBIT Q

Dr. Aubrey Galloway

Page 1

1

2 UNITED STATES DISTRICT COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 -----

5 QUICKIE, LLC,

6 Plaintiff,

7 vs.

07-CV-10331

8 GREENBERG TRAURIG, LLC, (RMB) (DFE)

9 et al.,

10 Defendants.

11 -----

12

13

14

15

COPY

16 DEPOSITION OF AUBREY GALLOWAY

17 Thursday, June 12, 2008

18 9:30 a.m.

19

20

21

22 Reported by:

23 Joan Urzia, RPR

24 JOB NO. 203729

25

ESQUIRE DEPOSITION SERVICES, LLC.

1-800-944-9454

Dr. Aubrey Galloway

Page 23

1 A. Galloway

2 BY MR. KAMINSKY:

3 Q. Please try to answer my question.

4 When is the first time that you
5 personally learned that maintenance fees
6 would have to be paid by a patent holder?
7 I'm simply asking you when you learned that
8 fact.

9 A. Sometime around the time of the
10 issuance of the S&A Rings patent and the
11 '160 Patent.

12 Q. So that would have been in the
13 late 1990s or about 2000, is that correct?

14 A. Correct.

15 Q. And Mr. Sharinn told you that
16 fact, didn't he?

17 A. To my recollection, correct.

18 Q. Now, did you or anyone else at
19 the Colvin Galloway companies do anything
20 within the companies to make a note of the
21 fact that maintenance fees were going to
22 become due on the patent or patents?

23 A. Yes, we employed Mr. Sharinn's
24 law firm to do that.

25 Q. Did you do anything internally

Dr. Aubrey Galloway

Page 26

1 A. Galloway

2 patents?

3 A. I don't think I can simply answer
4 that yes or no.

5 Q. Can you say anything more than
6 you can't answer it yes or no to tell us
7 whether you were or were not looking to
8 Mr. Fell for that role?

9 A. Well, I mean, I thought you
10 wanted a yes or no answer.

11 Q. Well, can you say yes, I was to
12 this extent or not to that extent, is there
13 anything more you can say? If there isn't,
14 okay, I'm going to let it go at that.

15 A. No, there's nothing else.

16 Q. Okay.

17 Now, Mr. Sharinn told you when
18 each patent was issued that maintenance
19 fees would be due three and a half years,
20 seven and a half years and 11 and a half
21 years from the date the patent issues, is
22 that correct?

23 A. I believe that's probably
24 correct, yes.

25 Q. Did anyone within the Colvin

Dr. Aubrey Galloway

Page 27

1 A. Galloway

2 Galloway companies diary any of those dates
3 or make any entries in your records to keep
4 track of those dates?

5 A. I don't know the answer to that.

6 Q. You were the managing member of
7 the entities, is that correct?

8 A. That's correct.

9 Q. Did you do so?

10 A. No.

11 Q. Did you direct anyone to do so?

12 A. No.

13 Q. Now, are you aware that the bills
14 for the various Colvin Galloway entities
15 were sent to Mr. Steiner's law firm?

16 A. Yes.

17 Q. Who decided -- I'm sorry, did I
18 say Mr. Steiner's law firm? I meant
19 Mr. Fell's law firm. Did you understand
20 that?

21 A. The Rick Steiner law firm that
22 employed Mr. Fell, correct.

23 Q. Who directed that the legal bills
24 from the various IP counsel should go to
25 the entity's care of the Rick Steiner law

Dr. Aubrey Galloway

Page 37

1 A. Galloway

2 at times significant expenditures beyond
3 the inflow of cash, particularly once we
4 were not within a development agreement,
5 and so therefore there were calls for
6 capital cash flow into that.

7 Q. Now, Quickie, as you said, had
8 two patents, correct? Did Quickie enter
9 into a license agreement with anyone other
10 than Medtronic with respect to the '160
11 Patent?

12 A. No, we entered into -- the only
13 license agreement that we actually entered
14 into with the '160 Patent was Medtronic.

15 Q. How long did that license
16 agreement last?

17 MR. DIAMOND: Objection to form.

18 MR. KAMINSKY: Okay. Let me
19 restate the question.

20 BY MR. KAMINSKY:

21 Q. What was the duration of that
22 license agreement?

23 A. I don't recall the exact amount
24 of time. It was to my recollection several
25 years, maybe two years, maybe around that

Dr. Aubrey Galloway

Page 38

1 A. Galloway

2 time.

3 Q. And Medtronic terminated the
4 license agreement, is that correct?

5 A. Correct.

6 Q. Why did Medtronic terminate the
7 license agreement?

8 MR. DIAMOND: Objection to form.

9 Lack of foundation. If you know.

10 A. First of all, I don't know
11 exactly their business reasons for
12 terminating the agreement. We were working
13 on a specific product with Medtronic and we
14 got up to a certain point and they at that
15 point decided they did not want to go
16 forward with that development agreement,
17 but the specific reasons I don't know.

18 Q. Who would know the answer to that
19 question?

20 A. I suppose the people in Medtronic
21 that made that decision.

22 Q. Did Mr. Fell ever tell you that
23 Medtronic told him that they didn't think
24 that the technology was capable of being
25 commercialized?

Dr. Aubrey Galloway

Page 39

1 A. Galloway

2 A. I don't recall that.

3 Q. There was a lawsuit between
4 Quickie and Medtronic in the Federal Court
5 in New York starting in 2002 and for some
6 years thereafter, is that correct?

7 A. That's correct.

8 Q. You were deposed in that lawsuit,
9 is that correct?

10 A. That's correct.

11 Q. Are you aware that Mr. Fell was
12 also deposed in that lawsuit?

13 A. I believe that's correct.

14 Q. Did you ever read Mr. Fell's
15 deposition in that lawsuit?

16 A. Not that I recall.

17 Q. I'm going to read you some
18 testimony from Mr. Fell's deposition and
19 tell me if this is the first time you've
20 ever heard that, this testimony.

21 This is on page 87 of his
22 transcript:

23 QUESTION: So Medtronic never
24 told you why they terminated the
25 agreement?

Dr. Aubrey Galloway

Page 40

1 A. Galloway

2 ANSWER: Not specifically.

3 QUESTION: Did they generally?

4 ANSWER: Generally, they said
5 they didn't think the technology was
6 capable of being commercialized."

7 **Q. Did you ever hear that testimony**
8 **before?**

9 A. Not that I recall.

10 **Q. Were you aware that Mr. Fell had**
11 **given testimony substantially of that**
12 **nature?**

13 MR. DIAMOND: Objection to form.

14 A. Well, I was aware that he gave
15 testimony, but as I said, I hadn't really
16 read his testimony.

17 **Q. Now, the Colvin Galloway entities**
18 **did not attempt to license the '160 Patent**
19 **to anyone else after Medtronic terminated**
20 **its license with Quickie, is that correct?**

21 A. No, that's -- well, let me think
22 about that one minute -- no, that's not
23 correct.

24 **Q. Do you remember that you were**
25 **deposed in the Quickie Medtronic case on**

Dr. Aubrey Galloway

Page 41

1 A. Galloway

2 July 30, 2003?

3 A. Yes, I do.

4 **Q. In that deposition you were asked**
5 **this question and gave this answer on page**
6 **128:**

7 QUESTION: After the
8 termination, did you attempt to pursue
9 this technology we've been talking
10 about with a company other than
11 Medtronic?

12 ANSWER: No.

13 Do you recall giving that
14 testimony?

15 A. Yes, I do.

16 **Q. Okay.**

17 **Is that testimony correct?**

18 A. At that time it was correct.

19 **Q. Have you since this deposition**
20 **sought to license the '160 Patent?**

21 A. Yes.

22 **Q. When did you attempt to do so?**

23 A. It was -- I don't know the exact
24 date -- it was approximately the same time
25 that we found that the patent had not been

Dr. Aubrey Galloway

Page 44

1 A. Galloway

2 2006 that you learned that?

3 A. It appeared that according to
4 this document that it was around 2006.

5 Q. Do you have any other information
6 as to when you learned or -- strike that.

7 Do you deny that it was on July
8 23rd, 2006?

9 MR. DIAMOND: Objection to form.

10 A. I guess I can't confirm or deny.
11 I don't remember specifically.

12 Q. After the patent expired, Quickie
13 attempted to get the patent reinstated, is
14 that correct?

15 A. That's correct.

16 Q. Did you participate with
17 Quickie's counsel in preparing the papers
18 that were submitted in support of the
19 petition to reinstate the patent?

20 A. No.

21 Q. Do you remember submitting a
22 statement in support of the petition to
23 reinstate the patent?

24 A. I remember there was a statement
25 submitted.

Dr. Aubrey Galloway

Page 45

1 A. Galloway

2 Q. Let me show you a document that's
3 been marked Exhibit 54, which is a
4 supplement to the petition that's signed by
5 Maier & Maier.

6 Do you know who Maier & Maier
7 are?

8 A. Yes, I do.

9 Q. They were your, they were
10 Quickie's counsel in connection with the
11 application and petition to reinstate the
12 patent, is that right?

13 A. Yes, they were.

14 Q. And, in fact, you personally
15 signed the Power of Attorney that gave him
16 authority to do that on behalf of Quickie,
17 didn't you?

18 A. Not that I recall.

19 (Exhibit 55, Petition to Accept
20 Unavoidably Delayed Payment of
21 Maintenance Fees in an Expired Patent
22 (37 CFR 1.378(b)), marked for
23 identification, as of this date.)

24 BY MR. KAMINSKY:

25 Q. Let me show you a document

Dr. Aubrey Galloway

Page 46

1 A. Galloway
2 which we are marking Exhibit 55.
3 It's entitled petition to accept
4 unavoidably delayed payment of
5 maintenance fees in an expired patent
6 (37 CFR 1.378(b)).

7 I ask you whether you've ever
8 seen that document before.

9 A. Yes, I must have seen this
10 document and I signed this document.

11 **Q. And does that refresh your**
12 **recollection that you signed the grant of**
13 **limited Power of Attorney whereby you**
14 **appointed Maier & Maier as counsel for**
15 **Quickie in connection with the petition to**
16 **reinstate the patent?**

17 A. This document says that we
18 granted limited Power of Attorney to Maier
19 & Maier for the above-referenced petition
20 in the Patent and Trademark Office.

21 **Q. In fact, it says, to be complete,**
22 **that Maier & Maier, Timothy Maier and**
23 **Christopher Maier, both jointly and**
24 **separately as attorneys with full power of**
25 **substitution and revocation file and**

Dr. Aubrey Galloway

Page 47

1 A. Galloway
2 prosecute this, the above petition, in the
3 Patent and Trademark Office, is that
4 correct?

5 A. That's what it says, correct.

6 **Q. And that's what the Power of**
7 **Attorney is for, is that right?**

8 A. My understanding is that's true.

9 **Q. And you signed it, correct?**

10 A. Correct.

11 **Q. Now, would you look again at**
12 **Exhibit 54 that I handed to you. That's a**
13 **document that Maier & Maier submitted on**
14 **behalf of Quickie, is that correct, in**
15 **connection with the petition to reinstate**
16 **the patent, correct?**

17 A. Yes, it appears that that's a
18 letter prepared by Timothy Maier.

19 **Q. On behalf of Quickie, correct?**

20 A. Correct.

21 **Q. As a supplement to the petition**
22 **under 37 CFR Section 1.378(b), correct?**

23 A. Correct.

24 **Q. Would you look at the first full**
25 **paragraph of that supplement, do you see in**

Dr. Aubrey Galloway

Page 48

1 A. Galloway

2 that Mr. Maier says on behalf of Quickie:

3 "The actions and inactions of
4 Thelen Reid & Priest, Medtronic's
5 re-examination requests and even the U.S.
6 PTO led the patent owner to believe that
7 their '160 Patent was viable. Not until
8 July 23, 2006 did the patent owner first
9 learn that their valuable '160 Patent had
10 expired."

11 Do you see that?

12 A. Yes, I do.

13 **Q. Is that a correct statement?**

14 A. I believe that's correct.

15 **Q. Now, between July 2003 when you**
16 **gave your deposition in the Medtronic**
17 **action and July 2006 when Quickie learned**
18 **that the patent had expired, did Quickie**
19 **enter into a license agreement with any**
20 **other entity?**

21 A. Are you asking related to the
22 '160 Patent?

23 **Q. Yes.**

24 A. Between that time interval,
25 Quickie did not enter into a licensing

Dr. Aubrey Galloway

Page 55

1 A. Galloway

2 Q. And do you recall that the
3 Greenberg firm remained counsel through the
4 Markman Hearing which occurred in September
5 of 2002?

6 A. Yes.

7 Q. Promptly thereafter Greenberg
8 Traurig was replaced as counsel for Quickie
9 in that matter, is that correct?

10 A. Correct.

11 Q. That being the Medtronic case?

12 A. Yeah, shortly after the Markman
13 Hearing we replaced Greenberg Traurig as a
14 representative for litigation against
15 Medtronic with Thelen.

16 Q. Who made the decision to transfer
17 the case from Greenberg Traurig to Thelen
18 Reid & Priest?

19 A. Dr. Colvin and I did.

20 Q. Was there a particular lawyer at
21 Thelen Reid & Priest that you transferred
22 the case to?

23 A. I believe that -- well, there was
24 I think two lawyers, there was Mark Evens
25 and Bob Krebs.

Dr. Aubrey Galloway

Page 56

1 A. Galloway

2 Q. Did you know either of those two
3 lawyers before the fall of 2002?

4 A. Personally I did not.

5 Q. Did Dr. Colvin know them?

6 A. I believe Dr. Colvin knew Mark
7 Evens.

8 Q. During that year Mark Evens
9 became Dr. Colvin's brother-in-law, is that
10 correct?

11 A. I believe that's correct.

12 Q. Is that why the business was
13 transferred to Thelen Reid & Priest?

14 A. No. I think that's how
15 Dr. Colvin became to know Mark Evens and
16 then Dr. Colvin and I discussed how we
17 wanted to proceed with our litigation and
18 we felt that Thelen Reid & Priest was the
19 team we wanted to use.

20 Q. Well, in fact, everyone was more
21 than satisfied with the result of the
22 Markman Hearing, isn't that correct?

23 MR. DIAMOND: Objection to form.

24 BY MR. KAMINSKY:

25 Q. Is it not correct that Quickie

Dr. Aubrey Galloway

Page 57

1 A. Galloway
2 was more than satisfied with the result of
3 the Markman Hearing that Greenberg Traurig
4 had handled for Quickie?

5 A. Well, I can't speak for
6 Dr. Colvin, I can't speak for Alan Fell. I
7 of my simplistic view of the Markman
8 Hearing understood that it was a fairly
9 favorable hearing. So I was relatively
10 pleased with that.

11 **Q. Did you have any criticism of**
12 **Greenberg Traurig or Mr. Sharinn in the**
13 **handling of the Medtronic case in or as of**
14 **September and October 2002?**

15 MR. DIAMOND: You personally.

16 A. I personally had a very good
17 personal and professional interaction with
18 Greenberg Traurig.

19 **Q. Did you feel they had let you**
20 **down in any way?**

21 A. No.

22 **Q. Were you satisfied with their**
23 **legal services?**

24 A. Yes.

25 **Q. Did you feel that their legal**

Dr. Aubrey Galloway

Page 59

1 A. Galloway
2 had become his brother-in-law?

3 MR. DIAMOND: Objection. Form.

4 A. I'm not aware of that.

5 Q. Now, at a certain point you
6 revoked the authority for Greenberg Traurig
7 to represent Quickie before the United
8 States Patent and Trademark Office with
9 respect to the '160 Patent, is that
10 correct?

11 MR. DIAMOND: Objection to form.

12 A. Well, I don't know if that's -- I
13 don't know the specifics of that.

14 Q. Let us show you Exhibit 50.

15 Exhibit 50 is a notice of a
16 change of Power of Attorney that was sent
17 to Todd Sharinn of the Greenberg firm on
18 April 2003.

19 Were you aware that there had
20 been a change of the Power of Attorney with
21 respect to the '160 Patent at the U.S.
22 Patent and Trademark Office?

23 A. Yes.

24 Q. That's just one page. You're
25 welcome to look at anything you want.

Dr. Aubrey Galloway

Page 60

1 A. Galloway

2 A. Yes, yes.

3 Q. Okay.

4 Now would you look at --

5 MR. DIAMOND: I don't know if
6 this is a good time, but wherever you
7 get a breaking point.

8 MR. KAMINSKY: Sure, by all
9 means.

10 (Recess taken from 10:46 a.m. to
11 10:55 a.m.)

12 BY MR. KAMINSKY:

13 Q. Do you remember that Quickie
14 signed a revocation of the powers of
15 attorney that Greenberg Traurig previously
16 had with respect to the '160 Patent?

17 A. Yes.

18 Q. Let me show you a document which
19 has been marked Exhibit 51. It's a letter
20 from Thelen Reid & Priest to Dr. Colvin at
21 Quickie dated April 16th which encloses and
22 attaches a revocation of power form with
23 respect to the '160 Patent.

24 Have you ever seen that document
25 before?

Dr. Aubrey Galloway

Page 61

1 A. Galloway

2 A. I don't recall that I have.

3 Q. Okay.

4 Would you look at the last
5 page -- I'm sorry, the second-to-last page
6 of the document and do you see there is a
7 signature on that, above the name that's
8 printed Aubrey C. Galloway.

9 Do you see that?

10 A. Yes, I do.

11 Q. Is that your signature above
12 that?

13 A. Yes, it is.

14 Q. Now, would you look at the page
15 just before that and do you see that that
16 is a document which is entitled Power of
17 Attorney by assignee of entire interest
18 revocation of prior powers.

19 Do you see that?

20 A. Yes.

21 Q. You signed that document on
22 behalf of Quickie, is that right?

23 A. Yes.

24 Q. And there is a handwritten date
25 of March 4, 2003.

Dr. Aubrey Galloway

Page 62

1 A. Galloway

2 Do you see that?

3 A. Yes.

4 Q. Did you write that date in?

5 A. Yes.

6 Q. And is that the date you signed
7 the document?

8 A. Yes.

9 Q. Do you know when this document
10 was submitted to the United States Patent
11 and Trademark Office?

12 A. It looks like it was mailed on
13 3/20/03.

14 Q. And you're looking at the
15 certificate of mailing on the last page of
16 the document, is that correct?

17 A. Correct.

18 Q. Now, turning to the first page of
19 that document, do you see that the cover
20 letter says in the second paragraph "Also
21 enclosed is a copy of Power of
22 Attorney/Revocation of Prior Powers of
23 Attorney filed with the United States
24 Patent and Trademark Office on March 20,
25 2003 for your records."

Dr. Aubrey Galloway

Page 63

1 A. Galloway

2 Do you see that?

3 A. Yes.

4 Q. Is that when you understand that
5 Thelen Reid & Priest on behalf of Quickie
6 filed this document with the United States
7 Patent Office, that is the enclosed Power
8 of Attorney/Revocation of Prior Power Form?

9 A. Yes.

10 Q. Now, turning to the Power of
11 Attorney/Revocation of Prior Powers Form,
12 do you see that the document says under the
13 heading Revocation of Prior Powers of
14 Attorney, "All Powers of Attorney
15 previously given are hereby revoked"?

16 Do you see that?

17 A. Yes.

18 Q. And then it says, new Power of
19 Attorney, it says, "The following attorneys
20 or agents are hereby appointed to prosecute
21 and transact all business in the Patent and
22 Trademark Office connected therewith."

23 Do you see that?

24 A. Yes.

25 Q. And then there are a number of

Dr. Aubrey Galloway

Page 64

1 A. Galloway

2 names underneath that starting with Robert
3 E. Krebs.

4 Do you see that?

5 A. Yes.

6 Q. Mr. Krebs was a partner at Thelen
7 Reid & Priest, is that right?

8 A. Yes.

9 Q. Is it your understanding that all
10 of these other attorneys or getting the new
11 Power of Attorney were attorneys at Thelen
12 Reid & Priest?

13 A. Yes.

14 Q. And this is, as it says at the
15 top, a form in connection with Patent
16 Number 6,066,160.

17 Is that right?

18 A. Yes.

19 Q. The passive knotless suture
20 terminator for use in minimally invasive
21 surgery and to facilitate standard tissue
22 securing, is that right?

23 A. Yes.

24 Q. And that's the one that's at
25 issue in this lawsuit, is that right?

Dr. Aubrey Galloway

Page 66

1 A. Galloway

2 for the following attorneys are appointed
3 to prosecute and transact all business in
4 the Patent and Trademark Office connected
5 therein, as it says.

6 Q. And who typed in the names of the
7 new attorneys, that is the Thelen Reid &
8 Priest attorneys? Do you know who typed
9 those names in?

10 A. I don't know.

11 Q. Who prepared the form before it
12 was signed and submitted?

13 A. I don't know.

14 Q. Who advised Quickie that it
15 should submit this form to the U.S. Patent
16 and Trademark Office?

17 A. I believe that either Hal Berner
18 or Robert Krebs from Thelen may have
19 prepared the form, but I'm not sure, and
20 that Alan Fell would have reviewed the form
21 and advised us to sign it.

22 Q. And you did so, right?

23 A. Correct.

24 Q. Are you aware that another copy
25 of this form was signed and submitted in

Dr. Aubrey Galloway

Page 75

1 A. Galloway

2 I didn't mean to interrupt you.

3 A. I don't think that was the
4 question you asked me before.

5 **Q. What were you doing by this**
6 **letter?**

7 A. At this point I have to recall
8 where we were with the -- I mean, what I
9 recall is that we were giving powers of
10 attorney and the matters related to Quickie
11 with our own going patent and/or
12 infringement cases to Mark Evens and Sterne
13 Kessler Goldstein and Fox.

14 **Q. You were essentially replacing**
15 **Thelen Reid & Priest with Mark Evens' new**
16 **firm, isn't that correct?**

17 A. Correct.

18 **Q. As your counsel in connection**
19 **with your patent matters?**

20 A. That's what I believe we were
21 doing at that point, yes.

22 **Q. Yes.**

23 **And that's shortly after you have**
24 **learned as we've showed before that the**
25 **'160 Patent has expired, is that right, or**

Dr. Aubrey Galloway

Page 76

1 A. Galloway

2 had been abandoned or deemed abandoned by
3 the Patent Office, whatever the correct
4 terminology is, from the Patent Office?

5 A. I believe that's the correct time
6 period.

7 **Q. Is that why you replaced Thelen**
8 **Reid & Priest, because the abandonment of**
9 **the patent?**

10 MR. DIAMOND: Objection to form.

11 A. That may have been one of the
12 reasons. Another reason -- I don't recall
13 our entire thought processes, but again, I
14 think we had a lot of confidence in Mark
15 Evens as an attorney and as he changed the
16 firms, we had confidence to deal with them.

17 **Q. Now, shortly after that, you**
18 **hired Maier & Maier to petition to**
19 **reinstate the '160 Patent, correct?**

20 A. I don't recall the exact
21 timetable.

22 **Q. Let me show you Exhibit 55 again.**
23 **Does that refresh your**
24 **recollection, looking at the third page of**
25 **that document, that it was in October 2006**

Dr. Aubrey Galloway

Page 77

1 A. Galloway

2 that you gave a Power of Attorney to the
3 Maier & Maier firm to petition to reinstate
4 the '160 Patent?

5 A. Yes, that's what this says.

6 Q. Now, you personally signed a
7 statement in support of that petition,
8 didn't you?

9 A. I don't recall.

10 Q. Let me show you a document which
11 we've marked Exhibit 53 in a previous
12 deposition. It is a statement in support
13 of petition under 37 CFR Section 1.378(c)
14 which appears to bear the signature on the
15 second page Aubrey C. Galloway and the
16 handwritten date of October 27, 2006.

17 Is that your signature on the
18 second page?

19 A. No.

20 Q. Whose signature is that?

21 A. Well, I recall this circumstance.
22 You can look at the other signatures, it's
23 clearly not the same signature.

24 At the time that the patent was,
25 we found out that patent was not, had not

Dr. Aubrey Galloway

Page 78

1 A. Galloway
2 continued because of lack of payment, we
3 shortly thereafter hired or retained Maier
4 & Maier to have Power of Attorney to
5 attempt to get that reinstated and granted
6 them Power of Attorney as you showed me in
7 Exhibit 55.

8 I recall that they were under
9 some pressure to go to the Patent Office
10 and wanted to walk through a petition to
11 reinstate and that they would fax something
12 up to my office or send something up to my
13 office to give them that authority.

14 I recall that I was going to be
15 in the operating room, or I was in the
16 operating room, I operate every day, and I
17 believe this exhibit came up, it was signed
18 by someone in my office and then sent back
19 to them due to the matter of what was
20 related to me to be an urgency of
21 turnaround.

22 **Q. Did you authorize someone to sign**
23 **on your behalf?**

24 A. Yes, I would have spoken promptly
25 to Maier & Maier and authorized someone in

Dr. Aubrey Galloway

Page 79

1 A. Galloway
2 my office to sign on my behalf.

3 Q. So you stand by that signature as
4 if it were your own signature, is that
5 correct?

6 A. I stand by that I authorized
7 someone to sign this, but I actually didn't
8 see this until a couple of weeks ago.

9 Q. In this action we served requests
10 to admit upon Quickie, and in response to
11 the request to admit, a clean copy of which
12 we will mark Exhibit 58, we asked for an
13 admission on the following item, number 24
14 and got the following response:

15 Exhibit D, this is number 24,
16 "Hereto is a true and correct copy of the
17 statement in support of petition dated
18 October 27, 2006 signed by Aubrey Galloway
19 as the managing partner of Quickie which
20 was filed with PTO in 2006 (the statement
21 in support)."

22 The response is admit. Do you
23 see that.

24 A. Yes, I see that.

25 MR. DIAMOND: I understand

Dr. Aubrey Galloway

Page 80

1 A. Galloway

2 there's a difference in who has got
3 which copies, but we'll stipulate that
4 it says what it says.

5 Also, for the record, we'll be
6 supplementing, because when these were
7 submitted and filed, we did not know
8 either as to the testimony that
9 Dr. Galloway has now given.

10 **Q. Dr. Galloway, are you telling us**
11 **you told someone in your office they could**
12 **sign a document without your having first**
13 **read it?**

14 A. Yeah.

15 **Q. And you never read that document**
16 **again after that until just before this**
17 **deposition?**

18 A. That's correct.

19 **Q. Is that what you're telling us?**
20 **Did you ever read the materials**
21 **that Maier & Maier submitted on your behalf**
22 **in this lawsuit?**

23 A. I subsequently read other
24 materials that Maier & Maier submitted on
25 our behalf, I think, several months beyond

Dr. Aubrey Galloway

Page 81

1 A. Galloway
2 this letter that I think fully outlined the
3 reasons that we thought the patent should
4 not have lapsed, and I think that was
5 submitted several months after that to a
6 much more extensive document to the Patent
7 Office, around March or something like
8 that.

9 **Q. Were you aware at the time you**
10 **authorized someone to sign this document**
11 **that the statements that were going to be**
12 **made were being made under the penalties of**
13 **perjury?**

14 A. I probably was, yes.

15 **Q. Okay.**

16 **Have you ever notified the Patent**
17 **and Trademark Office that any statement in**
18 **Exhibit 53 is false and incorrect?**

19 MR. DIAMOND: Objection to form.

20 A. Well, I think, again, the
21 Maier --

22 **Q. I'm going to restate the question**
23 **because I don't want to have an objection**
24 **here.**

25 **Have you ever notified the United**

Dr. Aubrey Galloway

Page 82

1 A. Galloway

2 States Patent and Trademark Office that any
3 statement in Exhibit 53, the statement
4 signed for you under your name, was
5 incorrect?

6 A. Our attorneys Maier & Maier
7 notified the Patent Office of a more
8 extensive clarification of that statement
9 which was not incorrect, but was
10 incomplete.

11 **Q. Did you ever tell the Patent**
12 **Office that there were incorrect statements**
13 **in your statement?**

14 MR. DIAMOND: Objection to form.

15 A. Are you asking me personally?

16 **Q. Well, I'll start with you**
17 **personally.**

18 **Did you personally ever do that?**

19 A. No.

20 **Q. Has anyone on your behalf filed a**
21 **statement by you under penalty of perjury**
22 **saying that the prior statement you gave to**
23 **the Patent Office was incorrect in any way?**

24 MR. DIAMOND: Objection to form.

25 A. I don't think it was incorrect.

Dr. Aubrey Galloway

Page 83

1 A. Galloway

2 Q. Okay.

3 A. It was incomplete.

4 Q. Okay.

5 But you don't think it was
6 incorrect, is that right?

7 A. I don't think it was incorrect.
8 I think it was incomplete.

9 Q. All right.

10 Now, let me read you a statement
11 in the statement submitted under your
12 signature, or over your signature.

13 Paragraph 2 says: "As the
14 managing partner for Quickie, LLC, I
15 retained Robert E. Krebs, et al. of the
16 Thelen Reid & Priest, LLP law firm to
17 transact all post-issuance proceedings and
18 responsibilities in the Patent and
19 Trademark Office, including but not limited
20 to re-examination proceedings and timely
21 payment of the maintenance fee."

22 Do you see that?

23 A. Yes, I do.

24 Q. Is that statement correct?

25 A. I think it is correct.

Dr. Aubrey Galloway

Page 84

1 A. Galloway

2 Q. When did you retain Mr. Krebs to
3 do that?

4 A. I don't recall the specific date.

5 Q. Is that at the time that the
6 Power of Attorney revocation of Power of
7 Attorney form that we showed you before
8 that's included in Exhibit 51 was submitted
9 to the United States Patent and Trademark
10 Office?

11 A. I think that would be correct.

12 Q. Now, there is a second statement
13 in paragraph 3 that says:

14 "As managing partner of Quickie,
15 LLC, I retained the law firm of Thelen Reid
16 & Priest to concurrently conduct litigation
17 services for Quickie, LLC."

18 Is that statement correct?

19 A. Yes, I believe it is.

20 Q. And is that referring to the
21 Medtronic case?

22 A. I believe that's correct.

23 Q. Are you aware of any other
24 litigation on behalf of Quickie that the
25 Thelen Reid & Priest firm signed -- strike

Dr. Aubrey Galloway

Page 85

1 A. Galloway

2 that.

3 Are you aware of any other
4 litigation on behalf of Quickie in which
5 the Thelen Reid & Priest firm acted as
6 your, as Quickie's counsel?

7 A. No.

8 Q. Did you read any of the other
9 documents at the time that were submitted
10 by the Maier & Maier firm in connection
11 with the petition to reinstate the '160
12 Patent?

13 MR. DIAMOND: Objection to form.
14 It's a little broad.

15 A. Can I proceed with clarification?

16 Q. Sure.

17 A. Did I read at the time that the
18 documents were being submitted? Did I read
19 them at that time?

20 Q. Yes.

21 A. No.

22 Q. Did you ever read them after
23 that?

24 A. Yes.

25 Q. When did you read them after they

Dr. Aubrey Galloway

Page 86

1 A. Galloway

2 were first submitted to the Patent Office?

3 MR. DIAMOND: Same objection.

4 I'm not quite sure what documents
5 we're talking about here.

6 MR. KAMINSKY: Okay. Well, I'll
7 show specific documents to the witness
8 in a moment, and if I miss one, I'm
9 not trying to trap you. That's not
10 the intention.

11 BY MR. KAMINSKY:

12 Q. Do you remember when you
13 first read any of the documents that
14 were being submitted to or had been
15 submitted to the Patent Office on
16 behalf of Quickie in connection with
17 a petition to reinstate the patent?

18 A. I don't remember exactly when.

19 Q. Okay.

20 Let me show you a document which
21 we've marked Exhibit 52.

22 Exhibit 52 is a statement in
23 support of petition under 37 CFR 1.37(b)
24 signed by Todd S Sharinn dated November 20,
25 2006.

Dr. Aubrey Galloway

Page 87

1 A. Galloway

2 Have you ever seen that document
3 before?

4 A. Yes, I have.

5 Q. When did you first see that
6 document?

7 A. Probably approximately two weeks
8 ago.

9 Q. In paragraph 2 of that document,
10 Mr. Sharinn states:

11 "My responsibility, including the
12 payment of any maintenance fee that may
13 become due, for the subject patent ended
14 prior to the date where the payment of a
15 first maintenance fee, was due as evidenced
16 by the enclosed revocation of prior powers
17 of attorney signed on behalf of Quickie,
18 LLC on March 4, 2003 wherein 'all prior
19 powers of attorney previously given (were)
20 hereby revoked.'"

21 Do you see that statement?

22 A. Yes, I do.

23 Q. Is that statement correct?

24 A. No.

25 Q. Are you aware of anyone on behalf

Dr. Aubrey Galloway

Page 88

1 A. Galloway
2 of Quickie ever filing a paper or other
3 statement by Todd Sharinn ever retracting
4 this statement?

5 A. Well, I'm going to read this
6 statement, if I may, that he certified that
7 the fee indication form in October 2002
8 certified and the forms was mailed to the
9 Patent Office on October 22nd and that the
10 PTO change of address form indicating Pepe
11 & Hazard was superseded.

12 That change of address form to my
13 understanding he sent to Greenberg and
14 remained at Greenberg and still remains at
15 Greenberg, if it exists.

16 He states, therefore, that his
17 responsibility, including the payment of
18 any maintenance fees, was therefore not due
19 because we revoked Power of Attorney, which
20 is clearly not true, because we continued
21 to employ Greenberg for the following year,
22 year and a half, related to Quickie,
23 related to additional patents with Quickie
24 that we subsequently got, related to
25 maintenance of this patent, and relating to

Dr. Aubrey Galloway

Page 89

1 A. Galloway

2 several other intellectual properties with
3 Quickie, and we paid them a hell of a lot
4 of money over that time, several hundred
5 thousand dollars.

6 So for him to make that statement
7 is completely God damn false -- excuse my
8 language. But it's a misconception or a
9 misinterpretation of our entire business
10 relationship with him.

11 **Q. Have you ever filed a statement**
12 **by you with the Patent Office, the Patent**
13 **and Trademark Office, saying what you just**
14 **said?**

15 A. No.

16 **Q. Are you aware of anybody filing a**
17 **statement by Mr. Sharinn saying that when I**
18 **made this statement under penalty of**
19 **perjury this statement was false?**

20 A. It's incomplete. It's
21 incomplete.

22 **Q. Are you aware of anybody filing**
23 **any statement for Mr. Sharinn contradicting**
24 **this statement at any time?**

25 A. I'm not aware, no.

Dr. Aubrey Galloway

Page 90

1 A. Galloway

2 Q. Are you aware of anybody going to
3 Mr. Sharinn at any time and saying to
4 Mr. Sharinn, Mr. Sharinn, you filed this
5 statement on our behalf, we do not think it
6 is correct, we want you to file a different
7 statement?

8 Are you aware of that ever
9 happening?

10 A. As I told you, I just saw this
11 statement two weeks ago.

12 Q. So you're not aware of that
13 happening?

14 A. That's correct.

15 Q. Okay.

16 Now, are you aware that Maier &
17 Maier drafted this statement for
18 Mr. Sharinn to sign and went over it with
19 him before it was signed?

20 A. No, I'm not.

21 Q. Do you see that below
22 Mr. Sharinn's signature and the date, the
23 statement says care of Maier & Maier, PLLC,
24 and has their address, do you see that?

25 A. I do see that, and I see that and

Dr. Aubrey Galloway

Page 91

1 A. Galloway

2 again, if I recall my dates, that was in
3 November 2006, and I recall that Maier &
4 Maier submitted a statement to the Patent
5 Office several months after that that
6 clarified and expanded our understanding of
7 this statement.

8 Q. Are you aware that in denying
9 your application, the U.S. Patent and
10 Trademark Office relied, among other
11 things, on this very statement that was
12 submitted by your counsel, Quickie's
13 counsel, to the U.S. Patent and Trademark
14 Office?

15 MR. DIAMOND: Object to the form.

16 A. I don't know whether that's true
17 or not, and I'm not aware of how they make
18 their decision.

19 Q. Let me show you a document which
20 we'll mark Exhibit 59.

21 (Exhibit 59, Decision, marked for
22 identification, as of this date.)

23 BY MR. KAMINSKY:

24 Q. Exhibit 59 is a decision on
25 petition by the U.S. Patent and Trademark

Dr. Aubrey Galloway

Page 92

1 A. Galloway

2 Office which dismisses, in other words
3 denies, the petition by Quickie to
4 reinstate the patent.

5 Have you ever seen that document
6 before? It's dated, by the way, March 6,
7 2007.

8 A. Yes, I believe I've seen it.

9 Q. Now, would you look at page 4 of
10 that statement, of that decision.

11 A. Okay.

12 Q. Do you see the final paragraph,
13 before the conclusion, it says:

14 "Finally, the petition states
15 that on March 4, 2003 attorney Todd Sharinn
16 was responsible for the patent until March
17 4, 2003. Subsequently, on December 5,
18 2003, patentee filed a change of attorney
19 docket and change of address notice
20 changing the correspondence address to that
21 of Thelen Reid. Patentee has failed to
22 account for the period between March 4,
23 2003 when Sharinn's responsibility for the
24 patent terminated in December 5, 2003 when
25 the patentee filed a change of attorney

Dr. Aubrey Galloway

Page 93

1 A. Galloway
2 docket number and change of address
3 notice."

4 Do you see that?

5 A. Yes, I do.

6 Q. Do you see Mr. Sharinn's
7 statement earlier, it says that his
8 authority was revoked, or his
9 responsibility ended with the revocation of
10 powers, prior powers of attorney signed on
11 behalf of Quickie on March 4, 2003.

12 Do you see that?

13 A. Are you referring to Exhibit 52?

14 Q. Yes.

15 A. Yes, I do see that.

16 Q. Now, would you look again at
17 Exhibit 51, that's the letter that you
18 signed -- that's the letter that contains
19 the form, the March 2003 -- it's the letter
20 from Thelen Reid & Priest to Quickie
21 attaching the form that was filed with the
22 Patent Office in March -- do you see that
23 that's form you signed on March 4, 2003?

24 A. Yes.

25 Q. That's the form that Mr. Sharinn

Dr. Aubrey Galloway

Page 94

1 A. Galloway
2 is referring to, isn't it?

3 MR. DIAMOND: Objection to form.

4 A. I don't know what he's referring
5 to, but he may be referring to that. He's
6 referring to a Power of Attorney, and I
7 think this was the Power of Attorney form,
8 so it probably was.

9 Q. A Power of Attorney dated March
10 4, 2003?

11 A. Correct.

12 Q. That's what he says?

13 A. Correct.

14 Q. Are you aware of any other such
15 form dated March 4, 2003 that Quickie ever
16 signed?

17 A. No.

18 MR. DIAMOND: Objection to form.
19 Other than the one we've already
20 discussed today?

21 MR. KAMINSKY: Yes.

22 MR. DIAMOND: There were two.

23 MR. KAMINSKY: I think I said
24 it -- yes, okay.

25 BY MR. KAMINSKY:

Dr. Aubrey Galloway

Page 95

1 A. Galloway

2 Q. With your counsel's correction,
3 there were actually two of those forms
4 signed on March 4, 2003, both of which
5 revoked the prior Powers of Attorney and
6 appointed Thelen Reid & Priest and various
7 attorneys there as Quickie's counsel,
8 correct?

9 A. Correct.

10 Q. And are you aware of any other
11 form besides those two that was signed at
12 that time?

13 A. I'm not aware of any.

14 Q. Let me show you Exhibit 54.
15 Exhibit 54 is a supplement to petition
16 under 37 CFR Section 1.378(b) dated
17 December 4, 2006 and signed by Mr. Maier on
18 behalf of Quickie. He actually dated it
19 December 1st, but the file stamp from the
20 Patent Office says December 4th.

21 Do you see that?

22 A. Yes, I do.

23 Q. When was the first time you ever
24 saw this document?

25 A. I don't remember whether I

Dr. Aubrey Galloway

Page 96

1 A. Galloway
2 reviewed it in detail or read it in detail,
3 but I do recall that we were making an
4 amendment or a clarification to a filing
5 with the PPO at this time that this
6 document was going out, but I don't recall
7 that I read it in detail.

8 **Q. When do you think you first read**
9 **it?**

10 A. In detail, I probably first read
11 it approximately two weeks ago.

12 **Q. Now, are you aware of anyone ever**
13 **filing a statement with the Patent Office**
14 **on behalf of Quickie saying that anything**
15 **in this supplemented petition, which we've**
16 **marked as Exhibit 54, is inaccurate?**

17 A. I'm not aware of it.

18 **Q. When you read it, did you**
19 **determine that anything in the statement**
20 **was inaccurate?**

21 A. No, not that I recall.

22 **Q. And that was two weeks ago,**
23 **correct?**

24 A. Correct.

25 **Q. Now, let's look on the first page**

Dr. Aubrey Galloway

Page 97

1 A. Galloway

2 of the document in the third paragraph, and
3 it says:

4 "A declaration by Todd Sharinn is
5 being added to Exhibit 7 showing that he
6 was an attorney at Pepe & Hazard, LLP and
7 was responsible for the '160 Patent. Later
8 he left Pepe & Hazard, but continued to be
9 responsible for the '160 Patent as an
10 attorney at Greenberg Traurig (Exhibit 8).

11 "Further, his responsibility for
12 the '160 Patent ended prior to the time
13 period when payment of a first maintenance
14 fee was due) see Exhibits 3 and 10,
15 revocation of prior powers of attorney
16 signed on behalf of the patent owner on
17 March 4, 2003)."

18 Are you aware of anyone on behalf
19 of Quickie ever advising the Patent Office
20 that this statement made to the Patent
21 Office in December 2006 was false?

22 MR. DIAMOND: Objection to form.

23 A. I'm not aware of anyone making
24 that statement to me.

25 **Q. Are you aware of anyone advising**

Dr. Aubrey Galloway

Page 98

1 A. Galloway

2 the Patent Office that this statement was
3 inaccurate in any way?

4 A. No.

5 Q. Now, continuing on, on page 2 --
6 at the bottom of page 2 in the last
7 paragraph that carries over to page 3, the
8 statement says:

9 "Thelen Reid & Priest was granted
10 and held sole and full power in the '160
11 Patent from March 4, 2003 through August
12 14, 2006 (Exhibits 3, 9 and 10). This
13 period of time covered the time period up
14 until May 23, 2004 for timely paying the
15 first maintenance fee and the entire 2-year
16 time period starting from the date of the
17 '160 Patent's expiration to file a remedial
18 petition under the unintentional provision
19 (37 CFR 1.37(c)); this 2-year expiration
20 period ending on May 24, 2006."

21 Do you see that statement?

22 A. Yes, I do.

23 Q. Has anyone on behalf of Quickie
24 ever advised the U.S. Patent Office that
25 this statement that had been made to the

Dr. Aubrey Galloway

Page 99

1 A. Galloway

2 U.S. Patent Office was false?

3 MR. DIAMOND: Objection to form.
4 Misleading.

5 A. I don't know if we've had any
6 correspondence with the Patent Office on
7 this or not. I'm not aware if we have.

8 Q. Are you aware of anyone on behalf
9 of Quickie advising the U.S. Patent Office
10 that this statement was inaccurate in any
11 way?

12 MR. DIAMOND: Same objection.

13 A. I'm personally not aware of it.

14 Q. Would you look at the second full
15 paragraph on page 3 and let me read to you
16 the last two sentences of that paragraph:

17 "Thelen Reid & Priest failed to
18 discover and know that the '160 Patent had
19 expired when they filed, prepared and filed
20 amendments to claims and re-examination,
21 (Exhibit 14). It also appears that Thelen
22 Reid & Priest failed to docket the patent
23 for payment of maintenance fees."

24 A. No.

25 Q. Are you aware of anyone on behalf

Dr. Aubrey Galloway

Page 100

1 A. Galloway

2 of Quickie ever advising the U.S. Patent
3 Office that that statement was false?

4 A. No.

5 **Q. Are you aware of anyone on behalf**
6 **of Quickie ever advising the U.S. Patent**
7 **and Trademark Office that that statement**
8 **was inaccurate in any way?**

9 A. I seem to remember that there was
10 further correspondence with, from Maier to
11 the Patent Office, but I don't recall
12 exactly the specifics of that
13 correspondence.

14 **Q. So you're not aware, as you sit**
15 **here, you personally are not aware of**
16 **anyone advising the U.S. Patent and**
17 **Trademark Office that the particular**
18 **statement I read to you was inaccurate?**

19 MR. DIAMOND: Objection to form.
20 I think it mischaracterizes his
21 testimony.

22 A. Again, all I can say is I believe
23 that there was a follow-up document to the
24 Patent Office from Maier which may have
25 further clarified this. Whether that

Dr. Aubrey Galloway

Page 101

1 A. Galloway
2 characterizes it as accurate or not, I
3 can't say.

4 Q. Let me read to you another
5 statement from the supplemental petition
6 that was filed on behalf of Quickie, on
7 page 4 --

8 MR. DIAMOND: Same exhibit?

9 MR. KAMINSKY: Same Exhibit 54.

10 BY MR. KAMINSKY:

11 Q. "The patent owner" -- that's
12 Quickie, correct?

13 A. Correct.

14 Q. "The patent owner fully believed
15 that their valuable legal rights in the
16 '160 Patent would be justly protected by
17 the attorneys and law firm of Thelen Reid &
18 Priest when the patent owner chose them for
19 representation and executed the Power of
20 Attorney dated March 4, 2003 (see Exhibit
21 9).

22 "Unfortunately, such did not
23 occur and the patent owner was shocked to
24 learn from another party on March 23, 2006
25 that their '160 Patent had expired which

Dr. Aubrey Galloway

Page 102

1 A. Galloway

2 gravely prejudiced post-issuance litigation
3 proceedings and negotiations."

4 Do you see that statement?

5 A. Yes, sir.

6 **Q. Are you aware of anyone on behalf**
7 **of Quickie ever advising the U.S. Patent**
8 **office that that statement was false?**

9 MR. DIAMOND: Objection to form.

10 A. I'm not aware of anyone advising
11 the Patent Office specifically on this
12 statement.

13 **Q. Are you aware of anyone advising**
14 **the Patent Office that statement was**
15 **inaccurate?**

16 MR. DIAMOND: Same objection.

17 A. Again, I don't have the documents
18 in front of me, but I am aware of Maier,
19 the Maier firm sending a further
20 correspondence to the Patent Office and I
21 don't, I'm not really, I guess, equipped to
22 say whether that would characterize this as
23 inaccurate or incomplete.

24 **Q. Now, you are aware as you've just**
25 **said that the Maier firm submitted a**

Dr. Aubrey Galloway

Page 103

1 A. Galloway
2 petition for reconsideration of the
3 decision I showed you earlier and we marked
4 as Exhibit 59, denying the petition to
5 reinstate the patent, is that right?

6 A. Yes.

7 **Q. Did you ever read the decision by**
8 **the U.S. Patent and Trademark Office with**
9 **respect to the petition for**
10 **reconsideration?**

11 MR. DIAMOND: Objection to form.
12 Asked and answered.

13 MR. KAMINSKY: I don't think I
14 asked that.

15 MR. DIAMOND: I thought we
16 covered this document, no?

17 MR. KAMINSKY: No, this is the
18 second one.

19 MR. LODEN: You're talking about
20 59?

21 MR. DIAMOND: No, 59 is the
22 decision denying the petition to
23 reinstate the patent.

24 The witness has told us there was
25 a motion by Maier & Maier for

Dr. Aubrey Galloway

Page 104

1 A. Galloway

2 reconsideration of that decision.

3 Now I'm asking the witness did he
4 ever read the decision of the U.S.
5 Patent and Trademark Office with
6 respect to that petition for
7 reconsideration.

8 MR. DIAMOND: Withdraw the
9 objection.

10 A. I don't recall that I read it
11 specifically. I was certainly aware of the
12 ruling and we were going to petition for
13 reconsideration, but I don't recall that I
14 specifically read their denial.

15 **Q. They did deny the petition for**
16 **reconsideration, though, is that correct?**

17 A. I believe that's correct.

18 MR. KAMINSKY: Let me show you
19 Exhibit 60.

20 (Exhibit 60, Decision, marked for
21 identification, as of this date.)

22 BY MR. KAMINSKY:

23 **Q. This is the decision on petition**
24 **of the U.S. Patent and Trademark Office**
25 **that is file stamped to show copy mailed**

Dr. Aubrey Galloway

Page 105

1 A. Galloway

2 October 5, 2007.

3 I ask you if you've ever seen
4 that document before today.

5 MR. DIAMOND: Just to clarify, we
6 haven't yet in these documents
7 identified whatever was filed on May
8 7, 2007, correct?

9 MR. KAMINSKY: That's not an
10 exhibit, no.

11 MR. DIAMOND: Okay.

12 A. So can I hear the question again?

13 **Q. Yes.**

14 **Have you ever seen this decision**
15 **of the U.S. Patent and Trademark Office?**

16 A. Yes, I believe I have.

17 **Q. When did you see this document?**

18 A. I again may have seen it around
19 the time of its issuance, but I don't
20 recall specifics and I certainly reviewed
21 it approximately two weeks ago.

22 **Q. Now, you explained that Maier &**
23 **Maier took issue with some of the prior**
24 **rulings of the U.S. Patent and Trademark**
25 **Office and filed some further papers, is**

Dr. Aubrey Galloway

Page 107

1 A. Galloway

2 MR. DIAMOND: Excuse me, sorry to
3 interrupt you. I'm looking at the
4 original, it look like it's missing
5 pages or is incomplete, and I just
6 want to make sure.

7 MR. KAMINSKY: Oh, I wanted to
8 read page 3 and page 5, so you're
9 right.

10 Will you trust me to read it
11 faithfully?

12 MR. DIAMOND: Yes.

13 MR. KAMINSKY: I apologize. We
14 didn't notice that.

15 BY MR. KAMINSKY:

16 **Q. Actually, the document consists**
17 **of six pages and what may have happened is**
18 **that we copied every other page, for which**
19 **I apologize.**

20 I will read to you from page 3
21 that continues on to page 4. At the bottom
22 of page 3, the decision says:

23 "Petitioner next disagrees with
24 the decisions, conclusion that Sharinn's
25 responsibility concluded on March 4, 2003

Dr. Aubrey Galloway

Page 108

1 A. Galloway

2 and that there is no objective evidence to
3 support this conclusion."

4 In review of the supplement to
5 petition filed December 24, 2006 reveals
6 that petitioner herein filed a statement in
7 support of petition under 37 CFR 1.37 B
8 executed by Todd Sharinn wherein
9 Mr. Sharinn states on page 2 that:

10 "My responsibility included the
11 payment of any maintenance fee that may
12 become due for the subject patent ended
13 prior to the date wherein payment of a
14 first maintenance fee was due as evidenced
15 by the enclosed revocation of prior powers
16 of attorney signed on behalf of Quickie on
17 March 4, 2003 wherein all powers of
18 attorney previously given (were) hereby
19 revoked," and cites the statement of
20 Mr. Sharinn at P2.

21 Then it says the patent expired
22 on March 24, 2004. The relevant period is
23 the period March 24, 2004 and the filing of
24 a grantable petition.

25 When you read this decision, did

Dr. Aubrey Galloway

Page 109

1 A. Galloway

2 you see that the United States Patent and
3 Trademark Office had relied in denying your
4 petition for reconsideration on the
5 statement that Mr. Sharinn had made and
6 which your counsel had submitted on behalf
7 of Quickie that I read to you earlier?

8 MR. DIAMOND: Objection to form.

9 A. I do see what they said here and
10 what they gave as their reasons, and I
11 guess that that -- that's about all I can
12 conclude from it.

13 **Q. Has anyone gone back to the**
14 **Patent Office again, that is the Patent and**
15 **Trademark Office, and said with respect to**
16 **the petition for reconsideration wait a**
17 **minute, give us a chance to get another**
18 **statement that shows that what Mr. Sharinn**
19 **had said and that we submitted to you was**
20 **incorrect?**

21 A. Excuse me, what's the date of
22 this document?

23 **Q. The front page has a file stamp**
24 **from the office itself, that's the office**
25 **of the patent, the Patent and Trademark**

Dr. Aubrey Galloway

Page 121

1 A. Galloway

2 this very statement, namely that his
3 responsibility had ended on March 4, 2003
4 when that revocation of Power of Attorney
5 form was filed.

6 Do you remember that?

7 A. I do recall that.

8 Q. And you saw that in Exhibit 60
9 the decision of the Patent and Trademark
10 Office denying your petition for
11 reconsideration on pages 3 and 4, the U.S.
12 Patent and Trademark Office said we don't
13 agree with you there's no objective
14 evidence, in fact we specifically refer to
15 Mr. Sharinn's statement -- do you remember
16 that?

17 MR. DIAMOND: Objection to form.

18 A. Yeah, I do understand what was
19 said in Exhibit 60.

20 Q. Do you take issue with the U.S.
21 Patent and Trademark Office's conclusion in
22 Exhibit 60 that there is objective evidence
23 in the record submitted by Quickie's
24 counsel and in fact Mr. Sharinn's
25 responsibility had ended on March 4, 2004?

Dr. Aubrey Galloway

Page 123

1 A. Galloway

2 be taken under consideration, which they
3 did.

4 What I disagree with is that that
5 was all of the evidence involved for making
6 that decision. I think there's potentially
7 other evidence that they could consider to
8 make that decision which they didn't have
9 available at the time of that decision.

10 **Q. Now, are you aware of any other**
11 **such evidence that was submitted to the**
12 **U.S. Patent and Trademark Office at any**
13 **time that contradicts Mr. Sharinn's**
14 **statement other than the statement in**
15 **Exhibit 61, your petition for**
16 **reconsideration that you don't agree with**
17 **Mr. Sharinn's statement, or that you then**
18 **don't, no longer agree with Mr. Sharinn's**
19 **statement?**

20 A. As of this time, we've not given
21 any other or we haven't submitted any other
22 petition to the Patent Office for further
23 reconsideration beyond what we submitted in
24 Exhibit 61.

25 **Q. This is now a year and a month**

Dr. Aubrey Galloway

Page 124

1 A. Galloway
2 after the U.S. Patent and Trademark Office
3 has denied your petition for
4 reconsideration, correct?

5 A. Correct.

6 **Q. And as of this time, you've**
7 **submitted no further evidence to the Patent**
8 **and Trademark Office, is that right?**

9 MR. DIAMOND: Objection. Asked
10 and answered.

11 A. At this time or since that time,
12 since that rejection would have been in
13 litigation and we felt it's not wise to
14 submit for reconsideration while we were in
15 litigation, and it's my understanding that
16 at the time of this consideration that
17 there were many documents requested, that
18 we requested from Greenberg and from Thelen
19 and from Todd Sharinn for the Patent Office
20 which they didn't have available when they
21 made this decision and which we should
22 eventually make available to them so they
23 would have complete objective evidence.

24 But since we were in litigation,
25 we decided not to submit that information

Dr. Aubrey Galloway

Page 183

1 A. Galloway

2 (Pause)

3 BY MR. KAMINSKY:

4 Q. Let me show you a document that
5 we are marking 63.

6 (Exhibit 63, U.S. Patent and
7 Trademark Office decision, marked for
8 identification, as of this date.)

9 Q. Let me show you a document which
10 we're marking Exhibit 63. It is an action
11 taken by the U.S. Patent and Trademark
12 Office dated February 20, 2008 and
13 represents the decision on Medtronic's
14 request for re-examination of the '160
15 Patent.

16 Have you ever seen that before?

17 A. No, I don't recall that I've seen
18 this before.

19 Q. Are you aware that the U.S.
20 Patent and Trademark Office rendered a
21 decision that significantly narrowed the
22 '160 Patent from what had originally been
23 issued?

24 MR. DIAMOND: Objection to form.
25 Assumes facts not in evidence. Calls

Dr. Aubrey Galloway

Page 184

1 A. Galloway

2 for a legal conclusion.

3 Also, when you say you, again, I
4 have to clarify, I don't want to
5 testify, but Dr. Colvin was aware of
6 this in great detail on behalf of
7 Quickie, so --

8 MR. KAMINSKY: Well, just to
9 clarify for this, since Dr. Colvin has
10 passed away, we are assuming that
11 Dr. Galloway is the testifying expert
12 for Quickie and so I can't ask
13 Dr. Colvin obviously.

14 MR. DIAMOND: Certainly.

15 MR. KAMINSKY: So I'm really
16 asking him in that capacity.

17 A. So as a representative of
18 Quickie, I was aware that there was such a
19 ruling and I think actually was made aware
20 of that by Dr. Colvin, but I didn't really
21 read that ruling and I haven't really seen
22 this until now.

23 Q. Would you look at the third page
24 of the document, the page that's entitled,
25 "Office action and ex parte reexamination."

Dr. Aubrey Galloway

Page 185

1 A. Galloway

2 Do you see that?

3 Under part 2 where it says
4 summary of action, do you see that under
5 box 1A the decision of the Patent Office
6 notices that claims 1 through 34 were the
7 subject of a re-examination?

8 A. Yes, I see that.

9 **Q. And that's all of the claims that**
10 **were in the patent, is that right?**

11 MR. DIAMOND: Objection to form.
12 If you know.

13 A. I don't know specifically, but if
14 those were the 34 claims in the patent, I
15 understand that they were the subject of
16 reexamination, so I assume that's true.

17 **Q. Were you aware that Medtronic was**
18 **making a challenge and seeking a**
19 **re-examination of the entire patent?**

20 A. Yes.

21 **Q. Now, do you see under part 2,**
22 **item 3 on the page we're talking about, the**
23 **patent office determined that claims 26 and**
24 **30 are patentable and are confirmed?**

25 A. I do see that.

Dr. Aubrey Galloway

Page 186

1 A. Galloway

2 Q. So they agreed that two of the
3 claims were patentable and confirmed,
4 correct?

5 A. Connect.

6 Q. And do you see under item 4 that
7 they determined that claims 1 through 25,
8 27 through 29 and 31 through 34 were
9 rejected, do you see that?

10 A. Yes.

11 Q. So they struck those claims from
12 the patent, is that right?

13 MR. DIAMOND: Objection to form.

14 BY MR. KAMINSKY:

15 Q. Is that what you understand
16 happened?

17 A. I understand that the claims
18 listed under number 4, 1 to 25, 27 to 29
19 and 31 through 34 were rejected.

20 Q. And therefore were not going to
21 be patentable, is that right?

22 MR. DIAMOND: Objection to
23 form.

24 A. Well, according to this ruling,
25 they were rejecting -- we would have I

Dr. Aubrey Galloway

Page 187

1 A. Galloway

2 think an opportunity to appeal that.

3 **Q. Have you appealed that?**

4 A. I think that we would have to go
5 back to the Patent Office in my
6 understanding for potential re-examination.
7 I'm not the attorney, so I don't know for
8 sure.

9 **Q. Has Quickie instructed anyone to**
10 **appeal this decision or do anything to**
11 **attempt to overturn this decision that is**
12 **reflected in Exhibit 63?**

13 MR. DIAMOND: You can answer
14 other than in the instructions that
15 you or Quickie would have given to its
16 counsel.

17 THE WITNESS: Sure.

18 A. Again, up until this point, since
19 we're under litigation, I think we haven't
20 instructed a specific action on this part
21 at this time.

22 MR. KAMINSKY: No further
23 questions.

24 MR. DIAMOND: I will reserve all
25 my questions for this witness until

Dr. Aubrey Galloway

Page 188

1 A. Galloway

2 the time of trial.

3 MR. KAMINSKY: Okay. Thank you.

4 (Time noted: 1:46 p.m.)

5

6

7 _____
AUBREY GALLOWAY

8

9 Subscribed and sworn to before me

10 this ____ day of _____, 2008.

11

12 _____

13

14

15

16

17

18

19

20

21

22

23

24

25

Dr. Aubrey Galloway

Page 189

1

2

C E R T I F I C A T E

3 STATE OF NEW YORK)

4 : ss.

5 COUNTY OF NEW YORK)

6

7

8

9

I, Joan Urzia, a Notary Public
within and for the State of New York,
do hereby certify:

10

11

12

13

14

That AUBREY GALLOWAY, the witness
whose deposition is hereinbefore set
forth, was duly sworn by me and that
such deposition is a true record of the
testimony given by the witness.

15

16

17

18

19

I further certify that I am not
related to any of the parties to this
action by blood or marriage, and that I
am in no way interested in the outcome
of this matter.

20

21

22

IN WITNESS WHEREOF, I have
hereunto set my hand this 13th day of
June, 2008.

23

24

25



Joan Urzia

EXHIBIT R

Alan Fell

Page 1

1

2 UNITED STATES DISTRICT COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 -----

5 QUICKIE, LLC,

6

7 Plaintiff,

8

9 vs. 07-CV-10331 (RMB) (DFE)

10

11 GREENBERG TRAURIG, LLC, et al.,

12

13 Defendants.

14 -----

15

16

17

18 DEPOSITION OF ALAN FELL

19 Friday, June 20, 2008

20 9:30 a.m.

21

22

23

24 Reported by: Joan Urzia, RPR

25 JOB NO. 203749

COPY

Alan Fell

Page 10

1 Fell

2 member of an LLC I've occasionally brought
3 lawsuits.

4 Q How many LLCs are you a member
5 of?

6 A Eight or nine probably.

7 Q What businesses are they in?

8 A Most of them are real estate
9 businesses.

10 Q How many are not?

11 A One.

12 Q Is that Quickie?

13 A Uh-huh.

14 Q Do you still have a 4 percent
15 interest in Quickie?

16 A Yes, I do.

17 Q How long have you had that
18 interest?

19 A I don't know exactly when. It
20 was 2001 -- I don't remember exactly.

21 Q Did you make any capital
22 contribution to Quickie to get that
23 interest?

24 A No.

25 Q How did you come to get that

Alan Fell

Page 25

1 **Fell**

2 A An attorney from Medtronic. I
3 think his name was Tom, I think it's Tom
4 Irlinger, I think.

5 Q Do you recall that the agreement
6 provides that all notices that were going
7 to go to Quickie were going to go to you?

8 A Yes.

9 Q Why was that?

10 A Because I was the general
11 counsel.

12 Q Do you recall that the agreement
13 did not provide for notices to go to
14 Mr. Sharinn?

15 A I don't recall that, but I'm not
16 surprised.

17 Q At a certain point Medtronic
18 terminated that agreement, is that correct?

19 A That's correct.

20 Q Why did they terminate the
21 agreement?

22 A My recollection is that they
23 weren't happy, weren't -- I don't know if
24 happy is the correct word -- they weren't
25 satisfied with the progress of the

Alan Fell

Page 26

1 Fell

2 development of the device. I did receive a
3 letter. I don't remember the specifics of
4 the letter.

5 Q Do you recall that they stated
6 that it was something that they did not
7 think could be commercialized?

8 A I don't recall that, but if it's
9 in the letter, it's in the letter.

10 Q You did give testimony in the
11 Quickie action against Medtronic, correct?

12 A Yes.

13 Q You do recall that you gave a
14 deposition in that case, correct?

15 A Yes.

16 Q Your deposition was taken on
17 July 29, 2003, do you recall that?

18 A Generally, yes.

19 Q And it was taken at the offices
20 of the McDermott Will & Emery firm?

21 A Uh-huh.

22 Q At page 79 of your transcript
23 did you give this testimony:

24 "QUESTION: Did you have any
25 understanding as to why they wanted to

Alan Fell

Page 27

1 **Fell**

2 **do that?"**

3 MR. KAMINSKY: We should go back
4 a bit, referring to the letter that I
5 think you mentioned before.

6 "QUESTION: Do you understand
7 what that refers to?

8 "ANSWER: Yes, that they were
9 going to terminate the agreement,
10 which is what they did.

11 "QUESTION: Okay. Did you have
12 any understanding as to why they
13 wanted to do that?

14 "ANSWER: Not -- not
15 specifically, no.

16 "QUESTION: They never told you?

17 "ANSWER: Well they -- no, I
18 mean that's something I don't
19 understand. I don't understand the
20 technology. They just didn't think
21 apparently that the way they stated
22 it, that it was something that could
23 be commercialized."

24 BY MR. KAMINSKY:

25 **Q Do you remember giving that**

Alan Fell

Page 28

1 **Fell**

2 **testimony?**

3 A No, but if it's there, I'm sure
4 I did.

5 Q **And you'll stand by that**
6 **testimony?**

7 A I'm not going to say I'm a liar.

8 Q **Well, I'm asking you if you want**
9 **to change it.**

10 A I probably had the letter in
11 front of me at the time. You're asking me
12 to testify without the letter in front of
13 me. So, you know, it's the best of my
14 recollection.

15 Q **So as you sit here today, you're**
16 **not going to change that testimony?**

17 MR. LODEN: Objection. Form.

18 BY MR. KAMINSKY:

19 Q **Correct?**

20 A Correct.

21 Q **Did anyone else sign a license**
22 **agreement with Quickie for the technology**
23 **that's covered by the patent that was**
24 **involved in the Medtronic license?**

25 A No.

Alan Fell

Page 29

1 Fell

2 Q Did anyone else offer to sign
3 such a license?

4 A No.

5 Q You did approach at least two
6 other companies, is that right?

7 A That's correct.

8 Q Which two entities did you
9 approach?

10 A Ethicon and U.S. Surgical.

11 Q Is it correct that neither of
12 those entities was interested in doing a
13 license?

14 A Correct. But may I say
15 something? My recollection is one of the
16 concerns they had is the ancillary rights
17 that Medtronics may have had under the
18 agreement.

19 Q Well, after Medtronic terminated
20 the license agreement it had, Quickie never
21 made an effort to go back to U.S. Surgical
22 or Ethicon to see if they would then be
23 interested in licensing the patent, is that
24 correct?

25 A That's correct.

Alan Fell

Page 30

1 Fell

2 Q In fact, Quickie never went to
3 anyone else to see about licensing the
4 product, is that right?

5 A That's correct.

6 Q Did Quickie do anything to
7 attempt to commercialize the patent that
8 was covered by the Medtronic agreement?

9 MR. LODEN: Objection. Form.

10 The reason for the objection, when the
11 Medtronic agreement was signed, I
12 don't believe there was a patent.

13 MR. KAMINSKY: Well, let's
14 clarify.

15 BY MR. KAMINSKY:

16 Q There ultimately was a patent
17 that was issued on the knotless suture
18 device, is that right?

19 A Yes.

20 Q It's Patent No. 6,066,160, is
21 that correct?

22 A If you say so. I don't have it
23 in front of me.

24 MR. KAMINSKY: Can we show the
25 witness Exhibit 55?

Alan Fell

Page 31

1 Fell

2 It's not 55, okay.

3 (Whereupon, Exhibit 64 was
4 marked for Identification.)

5 BY MR. KAMINSKY:

6 Q I show you a document marked
7 Exhibit 64, it's Patent No. 6,066,160,
8 dated May 23, 2000.

9 Have you ever seen that document
10 before?

11 A Yes.

12 Q Is that the patent that was
13 issued to Quickie for the passive knotless
14 suture terminator?

15 A Yes. I think it was issued to
16 the inventors and then assigned to Quickie,
17 yes.

18 Q Is that the patent that was the
19 subject of the license agreement with
20 Quickie?

21 A Yes.

22 Q Now has Quickie made any other
23 effort besides the license agreement with
24 Medtronic that was terminated and the
25 approaches to U.S. Surgical and Ethicon to

Alan Fell

Page 33

1 Fell

2 Q What ongoing rights did
3 Medtronic have?

4 A I don't have -- something in the
5 agreement that gave them, that they were
6 concerned about. I don't recall exactly
7 what it was.

8 Q Had Medtronic asserted any
9 rights with respect to the '160 Patent
10 since it terminated the agreement?

11 A Not to my knowledge.

12 Q Has Quickie used any other
13 patent counsel since its existence?

14 A Yes.

15 Q Who else did Quickie use as
16 patent counsel?

17 A Beside whom? Let's --

18 Q Well, you mentioned Todd
19 Sharinn.

20 A Okay. Well, Todd Sharinn was
21 with several firms, two firms I believe,
22 Pepe & Hazard and Greenberg Traurig which
23 were each patent counsel to Quickie. Then
24 Thelen was involved with the litigation and
25 some patent issues as well.

Alan Fell

Page 34

1 Fell

2 Q Well, actually Thelen handled
3 the re-examination proceeding for this same
4 patent, isn't that correct?

5 A I believe so, yes. Then there
6 was another gentleman named Tim Maier also.

7 Q In fact, Thelen was Quickie's
8 counsel as to the '160 Patent when
9 maintenance fees first became due on that
10 patent, isn't that correct?

11 A I don't remember the date or who
12 was counsel when.

13 Q Do you remember that maintenance
14 fees became payable on the '160 Patent
15 commencing on May 23, 2003 and ending May
16 23, 2004?

17 A I wasn't aware of that until
18 after I found out that the time had expired
19 to pay the fees.

20 Q Well, in fact, you were and
21 we'll show you that you were --

22 A Okay.

23 Q -- aware, but do you remember as
24 you sit here today that maintenance fees
25 were due on the patent during the one-year

Alan Fell

Page 45

1 Fell

2 Q So I take it you stand by the
3 first clause, and then we'll go to the
4 second clause -- before I go back to that,
5 do you know what we're referring to by
6 revocation?

7 A I think I had seen it recently.

8 Q Do you recall that there was a
9 revocation of the prior Powers of Attorney
10 that had been given to Greenberg Traurig by
11 Quickie?

12 A Yes.

13 Q Do you recall that that
14 revocation was filed with the United States
15 Patent and Trademark Office on or about
16 March 4, 20003?

17 A I don't remember the specific
18 date of the filing, but I remember the
19 existence of a revocation.

20 Q Let me show you a document which
21 has been marked Exhibit 56.

22 Exhibit 56 is a revocation of
23 prior Powers of Attorney and an appointment
24 of new attorneys by Quickie signed by
25 Aubrey Galloway as managing partner of

Alan Fell

Page 47

1 **Fell**

2 **retaining the Thelen law firm?**

3 A Who chose the Thelen law firm,
4 is that what you're referring to?

5 Q Well, let's start with that.
6 **Who chose the Thelen law firm?**

7 A Probably Dr. Colvin and
8 Dr. Galloway.

9 Q Do you know why they chose the
10 **Thelen law firm?**

11 A I think Dr. Colvin was upset
12 that Paul Sutton who was a patent
13 partner -- I don't know if he's still
14 there -- but Greenberg Traurig had not
15 taken a more active role in the case and
16 the other reason as well is that there was
17 a partner at Thelen that was a relative, a
18 cousin, I think, of Dr. Colvin's then
19 girlfriend.

20 Q Isn't it a fact that Mark Evens
21 **who was a partner at the Thelen law firm**
22 **became a relative of Dr. Colvin?**

23 A Yes, that's correct.

24 Q And isn't that why the business
25 **was shifted to the Thelen law firm?**

Alan Fell

Page 48

1 **Fell**

2 A That wasn't the only reason.

3 Q Who told Greenberg Traurig that
4 they were going to be replaced by the
5 Thelen law firm?

6 A I probably called Todd because I
7 had a personal relationship with Todd
8 before -- I think I sent a letter
9 subsequently to reconfirm, but I think I
10 called him personally to tell him.

11 Q Did you tell him that Dr. Colvin
12 was bothered about Paul Sutton's
13 involvement?

14 A I don't recall.

15 Q You did tell him, however, about
16 Dr. Colvin's personal relationship with
17 Mark Evens, is that correct?

18 A I might have, but he might have
19 known that anyway. I think Mark Evens
20 attended the Markman Hearing where at the
21 point that Todd and his firm was still
22 representing Quickie.

23 Q Didn't you tell Todd Sharinn
24 that the Greenberg firm was going to be
25 replaced because Dr. Colvin wanted to give

Alan Fell

Page 50

1 Fell

2 knew that Quickie had filed a revocation
3 notice with the U.S. Patent Office in March
4 of 2002, correct?

5 MR. LODEN: Objection. Form.

6 A Are we at admission 19 still, or
7 where are we?

8 Q Well, actually if you want to
9 get that admission, go back to admission
10 number 2.

11 A I'm just trying to have the same
12 frame of reference.

13 Q I'm not at the moment reading
14 you an admission. I'm just making clear.

15 A Okay.

16 Q You were aware in March 2003
17 that Quickie had filed a revocation of
18 Greenberg Traurig's authority with respect
19 to the '160 Patent with the U.S. Patent and
20 Trademark Office, correct?

21 A Correct.

22 Q And you were aware that in that
23 document Quickie had designated the Thelen
24 lawyers as the lawyers with whom the Patent
25 Office should deal thenceforth with respect

Alan Fell

Page 51

1 **Fell**

2 **to the '160 Patent, correct?**

3 A Correct.

4 Q **Did you discuss that with anyone**
5 **at Quickie at the time?**

6 A I probably discussed it with
7 Dr. Galloway and Dr. Colvin. I don't have
8 a specific recollection of a conversation
9 that I had.

10 Q **Did you discuss it with the**
11 **Thelen lawyers?**

12 A I probably spoke to Mark Evans.
13 I didn't have much interaction with
14 Mr. Krebs.

15 Q **Did you discuss that with Todd**
16 **Sharinn at the time?**

17 A I already testified that I
18 called Todd Sharinn and told him that
19 Greenberg Traurig was going to be replaced
20 as attorneys in connection with the Quickie
21 litigation. I don't know if I've had
22 conversation after that. I probably spoke
23 to Todd, I did speak to him after that.

24 Q **Do you recall that Mr. Sharinn**
25 **received a notification from the patent**

Alan Fell

Page 52

1 **Fell**

2 **office that Greenberg Traurig had been**
3 **replaced as counsel with respect to the**
4 **'160 Patent?**

5 A I don't recall, but based on the
6 revocation I'm assuming that they were
7 notified.

8 Q When did you first hear about
9 that?

10 A When did I first hear about
11 what?

12 Q That Mr. Sharinn had received
13 such a notification from the U.S. Patent
14 office.

15 A I don't know. I don't remember
16 specifically.

17 Q Do you remember receiving a
18 letter from Mr. Sharinn enclosing a copy of
19 the revocation notice?

20 A I don't remember, but it's a
21 possibility that I received it.

22 Q Let me show you a document that
23 was pre-marked Exhibit 27.

24 A Uh-huh.

25 Q Exhibit 27 is a letter to

Alan Fell

Page 53

1 Fell

2 Quickie, care of Rick Steiner, dated May
3 15, 2003.

4 Do you recall receiving that
5 letter?

6 A Not specifically, but I'm sure I
7 did.

8 Q Do you see that it's addressed
9 to "Dear Alan"?

10 A Yes, of course.

11 Q Do you see that it refers to the
12 re-examination of the U.S. Patent No.
13 6,066,160?

14 Do you see that?

15 A Yes, I do.

16 Q That's the '160 Patent, correct?

17 A Correct.

18 Q Do you see that it encloses a
19 notice to Mr. Sharinn of Greenberg Traurig
20 that is dated April 2, 2003, and it states
21 that the Power of Attorney to you in this
22 application has been revoked?

23 Do you see that?

24 A Yes.

25 Q Do you see it says future

Alan Fell

Page 54

1 **Fell**

2 **correspondence will be mailed to the new**
3 **attorney of record?**

4 **Do you see that?**

5 **A Yes, I do.**

6 **Q New attorney of record were the**
7 **Thelen lawyers, is that correct?**

8 **A Correct.**

9 **Q Did you have any conversation**
10 **with Mr. Sharinn after you received this**
11 **letter about this letter and the notice**
12 **that it contained?**

13 **A I have no recollection of**
14 **conversations I might have had with**
15 **Mr. Sharinn at that time.**

16 **Q Did you call Mr. Sharinn up and**
17 **say to him, Todd, thanks for sending me**
18 **this notice, but we're still going to be**
19 **looking to you about the '160 Patent? Did**
20 **you ever have that conversation with him?**

21 **A I don't recall.**

22 **Q You don't recall ever having**
23 **that conversation, do you?**

24 **A Right.**

25 **Q Now in request number 3 -- I'm**

Alan Fell

Page 60

1 Fell

2 Exhibit 21 is a letter from the
3 Pepe & Hazard law firm, dated May 30, 2000,
4 to Stephen Colvin and it shows a CC on the
5 second page to Alan Fell.

6 You received a copy of that
7 letter, isn't that right?

8 A I'm sure I did.

9 Q Now do you see that in the
10 second page, in the paragraph that's there,
11 that the letter tells you that the fees are
12 due on or before three and a half, seven
13 and a half and eleven and a half years from
14 the date of the patent, from the date the
15 patent issues?

16 Do you see that?

17 A I see that.

18 Q Now you were looking to
19 Mr. Sharinn to advise you of that, you're
20 saying, is that right?

21 A It says in the letter: "We will
22 notify you regarding payment of the
23 maintenance fees several months before they
24 are due," and that's what I was relying on.

25 Q Now did you diary at any time --

Alan Fell

Page 61

1 **Fell**

2 A I didn't diary this, no. I was
3 relying on patent counsel to notify me.

4 Q Now, in fact, you were reminded
5 that patent fees were due three and a half
6 years after patent issued before the patent
7 fees were due in this case, weren't you?

8 MR. LODEN: Objection. Form.
9 If you understand it.

10 A I don't understand the question.

11 Q Did you understand that there
12 was a one-year period in which to pay the
13 patent fees?

14 MR. LODEN: Objection. Form.

15 A I was relying on patent counsel
16 to notify me.

17 Q I understand what you say you're
18 relying on, Mr. Fell, but what I want to
19 find out is what you knew.

20 A I didn't know, okay?

21 Q You didn't know?

22 A I received this letter. I
23 didn't diary. I was relying on patent
24 counsel to notify me.

25 Q Did you talk to Thelen Reid &

Alan Fell

Page 63

1 **Fell**

2 **when the '160 Patent maintenance fees**
3 **became due, isn't that correct?**

4 A I still think that Greenberg
5 Traurig was handling certain matters with
6 regard to the '160 Patent, including the
7 maintenance fees.

8 Q Can you answer my question,
9 please?

10 Greenberg Traurig was no longer
11 Quickie's attorney as to the '160 Patent
12 during the period when the maintenance fee
13 was due and could have been paid, isn't
14 that correct?

15 A I don't know if that's
16 completely correct.

17 Q Okay.

18 Would you look at request number
19 22?

20 A Sure.

21 Q Okay.

22 Page 7. The request says: "GT
23 was no longer Quickie's attorney as to the
24 '160 Patent during the one-year period in
25 issue when the maintenance fee was due and

Alan Fell

Page 64

1 Fell

2 could have been paid."

3 The response is: "The Rick
4 Steiner defendants admit request to admit
5 number 22."

6 A Uh-huh.

7 Q You stand by that statement,
8 don't you?

9 MR. LODEN: Objection. Form.
10 For the same basis that we talked
11 about earlier. Who is you?

12 BY MR. KAMINSKY:

13 Q You, Alan Fell.

14 A Yeah, I stand by that.

15 Q Both personally and on behalf of
16 your firm, is that right?

17 A Yes.

18 Q Now the next request said:
19 "Thelen was Quickie's counsel during the
20 one-year period in issue when the
21 maintenance fee was due and could have been
22 paid."

23 And the response was: "The Rick
24 Steiner defendants deny request to admit
25 number 15."

Alan Fell

Page 65

1 **Fell**

2 A I'm sorry, you're at 15?

3 Q Forgive me, I'm wrong.

4 The response was: "The Rick
5 Steiner defendants admit request to admit
6 number 23," correct?

7 A Correct.

8 Q And you stand by that statement
9 as well, don't you?

10 A Yes.

11 Q Now do you remember that Rick
12 Steiner -- strike that.

13 Do you remember that Quickie
14 replaced the Thelen law firm after the
15 patent was deemed to have expired?

16 A I'm sorry, could you repeat that
17 question?

18 Q Yes.

19 Do you remember that after the
20 '160 Patent had expired for non-payment of
21 the maintenance fees, Quickie retained
22 different counsel to replace Thelen?

23 A Yes.

24 Q Do you know the name of the
25 counsel?

Alan Fell

Page 66

1 **Fell**

2 A I think it was Maier & Maier.

3 Q Did you have anything to do with
4 the retention of Maier & Maier?

5 A What do you mean did I have
6 anything to do with?

7 Q Did you interview Maier & Maier?

8 A I spoke to Tim Maier on the
9 phone.

10 Q Who on behalf of Quickie chose
11 to retain Maier & Maier?

12 A Dr. Colvin and Galloway.

13 Q Did you recommend the Maier &
14 Maier firm?

15 A No.

16 Q How did Quickie come to meet
17 Mr. Maier?

18 A I think Mark Evens had
19 recommended Mr. Maier.

20 Q Did you have any dealings with
21 Mr. Maier while he represented the Quickie
22 firm?

23 A I spoke to him on the phone, he
24 e-mailed me some documents to review.

25 Q Do you remember that the Maier

Alan Fell

Page 67

1 Fell

2 firm represented Quickie in connection with
3 a petition by Quickie for a re-examination
4 or a resuscitation --

5 A I don't think it's
6 re-examination. I think it was --

7 Q -- or revival of the patent,
8 correct?

9 A Yes, yes.

10 Q Did you review any of the papers
11 that the Maier firm submitted on behalf of
12 Quickie in connection with that effort?

13 A I believe I did.

14 Q Do you remember that
15 Dr. Galloway gave a statement in support of
16 the petition to revive the patent?

17 A I don't remember specifically,
18 but he is the managing member of Quickie,
19 so.....

20 Q Do you remember that Todd
21 Sharinn was also asked to give a statement
22 in support of the petition?

23 A I recall that.

24 Q Did you read any of those
25 statements at the time?

Alan Fell

Page 68

1 **Fell**

2 A I probably did.

3 Q Did you read the petition?

4 A I possibly did.

5 Q And did you read the supplement
6 to the petition that was also filed by the
7 Quickie firm?

8 A I possibly did.

9 Q Maier & Maier filed all of those
10 papers on behalf of Quickie, is that
11 correct?

12 A That's correct.

13 Q And they were authorized to do
14 so, correct?

15 A Correct.

16 Q In fact, they got a specific
17 limited Power of Attorney authorizing them
18 to do so, is that right?

19 A I don't specifically recall, but
20 that might be true.

21 MR. LODEN: Marty, just so you
22 know, whenever you want to take a
23 break, I think I can reach out to Alan
24 and Skip and see if we can -- we've
25 been going about an hour.

Alan Fell

Page 69

1 Fell

2 MR. KAMINSKY: Okay. Whenever
3 you want to do it.

4 (Discussion held off record.)

5 BY MR. KAMINSKY:

6 Q Let me show you a document which
7 has been marked Exhibit 55, and if you
8 would look at the last two pages of that
9 document and tell me if that refreshes your
10 recollection that the Maier & Maier firm
11 received a Power of Attorney to represent
12 Quickie in connection with the petition to
13 revive the '160 Patent.

14 A Yes.

15 Q Let me show you two documents,
16 Exhibits 52 and 61. Exhibit 61 is the
17 petition for reconsideration -- strike
18 that.

19 Let me also ask you to look at
20 the first part of Exhibit 55 and tell me if
21 that is the petition to accept unavoidably
22 delayed payment of the maintenance fee in
23 an expired patent.

24 A Yes.

25 Q Did you see that at or about the

Alan Fell

Page 70

1 **Fell**

2 **time that it was filed, that is --**

3 A I don't specifically recall, but
4 in all likelihood, I did.

5 Q Now let me show you a document
6 that's been marked as Exhibit 52.

7 Exhibit 52 is a supplement to
8 the petition that was filed in December
9 2006.

10 Did you see that document?

11 A Yes.

12 Q And that was about the time of
13 the petition proceeding, is that right?

14 MR. LODEN: I'm sorry, you're on
15 52?

16 MR. KAMINSKY: 54.

17 A This says 52.

18 Q I meant 54. My apologies. Let
19 me start this again.

20 You saw Exhibit 54, the
21 supplemental petition, while the
22 proceedings seeking to revive the patent
23 were going on, is that correct?

24 A I have no specific recollection,
25 but in all likelihood, I did.

Alan Fell

Page 71

1 Fell

2 Q Now let me show you Exhibits 52
3 and 53, which are statements in support of
4 the petition that were filed in the Fall of
5 2006 and their statements by Dr. Galloway
6 and by Todd Sharinn.

7 Did you see those documents at
8 or about that time?

9 A I have, again, no specific
10 recollection, but in all likelihood I did.

11 Q Now would you look first at
12 Exhibit 53, the statement by Dr. Galloway.

13 Do you see that in paragraph 2
14 of that statement Dr. Galloway says: "As
15 managing partner for Quickie LLC, I
16 retained Robert E. Krebs, et al. of Thelen
17 Reid & Priest LLP law firm to transact all
18 post issuance proceedings and
19 responsibilities in the Patent and
20 Trademark Office, including but not limited
21 to re-examination proceedings and timely
22 payment of the maintenance fee."

23 Do you see that?

24 A Yes.

25 Q Did you ever tell Dr. Galloway

Alan Fell

Page 72

1 **Fell**

2 **that there was anything incorrect in that**
3 **statement?**

4 MR. LODEN: Objection. I just
5 caution the witness to the extent that
6 gets into attorney client relationship
7 or communications, be careful.

8 MR. KAMINSKY: Okay.

9 MR. LODEN: I think the question
10 does get into that topic.

11 MR. KAMINSKY: All right.

12 As I understand it, Quickie is
13 asserting the attorney client
14 privilege as to communications with
15 respect to legal advice with respect
16 to Mr. Fell and his law firm, is that
17 correct?

18 MR. LODEN: I'm asserting the
19 privilege with respect to the question
20 you asked of Mr. Fell, and that was
21 whether he ever told Dr. Galloway that
22 there was anything incorrect in that
23 statement.

24 MR. KAMINSKY: All right.

25 Well, I think I need to know

Alan Fell

Page 73

1 Fell

2 because one cannot assert the
3 privilege selectively. Am I correct
4 that in this lawsuit Quickie is
5 asserting the attorney client
6 privilege as to communications between
7 Mr. Fell and Quickie and his law firm
8 and Quickie that involved legal
9 advice?

10 MR. LODEN: I think that's
11 generally correct.

12 MR. KAMINSKY: Okay. It's on
13 the basis of that objection that
14 you're asking the witness not to
15 reveal attorney client communication
16 as to this document, correct?

17 MR. LODEN: As to the
18 question -- yeah, yeah, that's
19 correct.

20 BY MR. KAMINSKY:

21 Q Now I'm going to ask you a
22 question that calls for a yes or no answer,
23 and Quickie's counsel can determine whether
24 to assert an objection to that as well, but
25 did you ever have any discussion with

Alan Fell

Page 74

1 **Fell**

2 **Dr. Galloway about paragraph 2 of the**
3 **statement he submitted in support of**
4 **Quickie's petition in the Fall of 2006?**

5 MR. LODEN: Yeah, again, Marty,
6 I don't want to be obstructionist, but
7 I do think even putting the question
8 that way to answer yes or no asks him
9 to confirm whether or not that topic
10 was discussed, which would get into
11 privileged communication. So we do
12 instruct the witness not to answer.

13 BY MR. KAMINSKY:

14 Q Are you aware of any statement
15 by Quickie made to the U.S. Patent Office
16 ever saying to the U.S. Patent Office that
17 any of the statements in Dr. Galloway's
18 statement that has been marked Exhibit 53
19 were or are incorrect?

20 A I'm not aware of any.

21 Q Now would you look at the
22 document that we've marked Exhibit 54,
23 which is the supplement to the petition.

24 Do you see that on the first
25 page the document says: "A declaration

Alan Fell

Page 75

1 **Fell**

2 **by Todd S. Sharinn is being added as**
3 **Exhibit 7."**

4 **Do you see that?**

5 A I think it says "to Exhibit 7."

6 Q **Correct. Do you see that?**

7 A Yes.

8 Q **Do you see that it continues in**
9 **the second sentence and says: "His**
10 **responsibility for the '160 Patent ended**
11 **prior to the time period when the payment**
12 **of a first maintenance fee was due (see**
13 **Exhibits 3 and 10, revocation of prior**
14 **Powers of Attorney signed on behalf of the**
15 **patent owner on March 4, 2003)."**

16 **Do you see that?**

17 A Yes.

18 Q **Did you have any discussion with**
19 **anyone at Quickie with respect to that**
20 **statement in the supplemental petition?**

21 MR. LODEN: Same objection to
22 the extent those discussions involve
23 the giving of legal advice, we assert
24 the privilege and I instruct the
25 witness not to answer, to the extent

Alan Fell

Page 78

1 **Fell**

2 **withdrew or contradicted these statements.**

3 A This is from the 52, 53 and --

4 Q **This is from 54.**

5 A 54, okay.

6 Q I'll read you specific
7 provisions in the interest of time.

8 If you would look on the second
9 page of that exhibit, at the bottom of the
10 page, the document that is the supplement
11 to the petition stated to the U.S. Patent
12 Office that: "Thelen Reid & Priest was
13 granted and held sole and full power in the
14 '160 Patent from March 4, 2003 through
15 August 14, 2006 (Exhibits 3, 9 and 10).
16 This period of time covered the time period
17 up to May 23, 2004 for timely paying the
18 first maintenance fee and the entire 2-year
19 period starting from the date of the '160
20 Patent's expiration to file a remedial
21 petition under the unintentional provision
22 (37 CFR 1.378(c)); this 2-year expiration
23 period ending on May 24, 2006."

24 Do you see that statement?

25 A Yes, I do.

Alan Fell

Page 79

1 Fell

2 Q Are you aware of any statement
3 by Quickie withdrawing or otherwise stating
4 to the U.S. Patent office that this prior
5 statement by Quickie was incorrect?

6 A The statement by Quickie, no.

7 Q Do you see continuing on page 3,
8 the supplemented petition says: "The
9 actions and inactions of Thelen Reid &
10 Priest, Medtronic examination requests" --

11 A Re-examination requests.

12 Q Re-examination requests, thank
13 you -- "and even the U.S. PTO, led the
14 patent owner to believe that their '160
15 Patent was viable."

16 Do you see that?

17 A Yes.

18 Q And then it continues: "Not
19 until July 23, 2006 did the patent owner
20 first learn that their valuable '160 Patent
21 had expired."

22 Do you see that?

23 A Yes, I do.

24 Q And then continuing on in the
25 next paragraph, the last two sentences

Alan Fell

Page 80

1 Fell

2 read: "Thelen Reid & Priest failed to
3 discover and know that the '160 Patent had
4 expired when they prepared and filed
5 amendments to the claims and re-examination
6 (Exhibit 14). It also appears that Thelen
7 Reid & Priest failed to docket the patent
8 for payment of maintenance fees."

9 Do you see that?

10 A Yes, I do.

11 Q Are you aware of any statement
12 by Quickie advising the U.S. Patent office
13 that there was any error in the statements
14 I just read?

15 A No.

16 Q Would you look on page 4.

17 Do you see that in the second to
18 last paragraph the supplemental petition
19 states: "The patent owner fully believed
20 that their valuable legal rights in the
21 '160 Patent would be justly protected by
22 the attorneys and law firm of Thelen Reid &
23 Priest when the patent owner chose them for
24 representation and executed the Power of
25 Attorney dated March 4, 2003 (see Exhibit

Alan Fell

Page 81

1 **Fell**

2 **9). Unfortunately that did not occur --**

3 A Such did not occur.

4 Q -- such did not occur."

5 Do you see that?

6 A Yes.

7 Q Are aware of any statement by
8 Quickie to the U.S. Patent office that
9 there was any error in the statement I just
10 read to you?

11 A No.

12 Q The petition was denied, is that
13 correct?

14 A Correct.

15 Q Do you recall that Quickie then
16 sought reconsideration of the petition?

17 A Yes.

18 Q And that was also denied, do you
19 recall that?

20 A Yes.

21 Q Did you ever see the decision of
22 the Patent Office denying the petition for
23 reconsideration?

24 A I believe I did.

25 Q Let me show you a document which

Alan Fell

Page 83

1 Fell

2 question?

3 Q Yes.

4 While these proceedings that
5 I've just been asking you about were going
6 on, Medtronic had asked the U.S. Patent
7 office to re-examine the patent and
8 determine whether all of the claims in the
9 patent were actually allowable and
10 patentable, is that correct?

11 MR. LODEN: Same objection.

12 A That's correct.

13 Q And the U.S. Patent Office
14 issued two decisions in connection with the
15 patent on requests for re-examination by
16 Medtronic, is that right?

17 A I believe so.

18 Q Do you remember that the Patent
19 Office significantly narrowed the scope of
20 the patent?

21 MR. LODEN: Object to the form.

22 A I don't remember specifically.

23 Q Let me show you a document which
24 has been marked Exhibit 63, which is a
25 decision of the U.S. Patent office in

Alan Fell

Page 84

1 Fell

2 February of 2008. It's dated February 20,
3 2008.

4 Have you ever seen that document
5 before?

6 A I don't specifically recall, but
7 I probably did.

8 Q Do you see that in the third
9 page of that exhibit under part 2 entitled
10 summary of action, item 3 states that
11 claims 26 and 30 in the patent are
12 patentable and are confirmed?

13 Do you see that?

14 A Just for a second, I don't
15 recall seeing this document. This is
16 relatively recently, right? This is this
17 year?

18 Q Yes.

19 A I don't actually recall seeing
20 this document.

21 Q Okay.

22 Well, would you turn to the
23 third page?

24 A Yes.

25 Q Okay.

Alan Fell

Page 85

1 **Fell**

2 A This is a week and a half before
3 Dr. Colvin died.

4 Q Very recently, correct.

5 A Yeah.

6 Q The page that's entitled office
7 action in ex parte examination, do you see
8 that page?

9 A Yes, I do.

10 Q Do you see that part two
11 summarizes the action that was taken by the
12 Patent Office?

13 A Yes.

14 Q Do you see that item 1A notes
15 that claims 1 through 34 were subject to
16 re-examination?

17 A Yes.

18 Q There were 34 claims in the
19 patent?

20 A Uh-huh.

21 Q Do you see that item 3 says that
22 claims 26 and 30 are patentable and were
23 confirmed?

24 A Uh-huh.

25 Q And then item 4 says that claims

Alan Fell

Page 86

1 **Fell**

2 **1 through 25, 27 through 29, and 31 through**
3 **34 were rejected?**

4 **A** Uh-huh.

5 **Q** **Were you advised that all except**
6 **two claims in the patent were declared**
7 **unpatentable when the re-examination**
8 **proceeding was decided?**

9 **MR. LODEN:** I just caution you
10 to the extent your answer does not
11 involve --

12 **A** I don't recall seeing this
13 decision.

14 **Q** **Well, my question really is were**
15 **you advised by anyone that, in fact, there**
16 **had been such a decision?**

17 **A** I don't recall being advised by
18 anyone.

19 **Q** **Do you know if Quickie has taken**
20 **any steps to seek an appeal or reverse this**
21 **decision that's reflected in Exhibit 63?**

22 **A** Not to my knowledge.

23 **Q** **Do you recall that all the**
24 **billings for work that Greenberg Traurig**
25 **did for Quickie or its affiliates were sent**

Alan Fell

Page 87

1 **Fell**

2 **to you as general counsel of Quickie?**

3 A Yes.

4 Q **There were actually more than**
5 **one entity that was involved, is that**
6 **right?**

7 A That's correct.

8 Q **What other entities was**
9 **Greenberg Traurig doing work for?**

10 A I think they were doing work for
11 S&A rings and another entity called
12 E-Surge. There might have been some other
13 entities, but I don't think they did much
14 or much happened to it.

15 There was something called
16 BioSurge, I think, and Quickie Vision or
17 something, but I don't -- nothing really
18 happened with those entities.

19 Q **Those entities were all LLCs, is**
20 **that correct?**

21 A Correct.

22 Q **And some of the members of those**
23 **entities were different, is that correct?**

24 A Correct.

25 Q **So that they didn't have all the**

Alan Fell

Page 94

1 Fell

2 specifically, but it would have come to me.

3 Q Do you see that both those
4 documents refer to Quickie devices in the
5 Re portion of the letter?

6 A Yes.

7 Q Yet, for example, when
8 discussing the re-examination of the '160
9 Patent by Medtronic, Mr. Sharinn wrote the
10 letter to S&A Rings.

11 Do you see that?

12 A Yes.

13 Q You knew he was referring to a
14 Quickie device when you got this letter,
15 didn't you?

16 A Yeah, I would go by the Re, not
17 how it was addressed generally.

18 Q Well, you'd actually go by the
19 body of the letter, wouldn't you?

20 MR. LODEN: Objection. Form.

21 A Yeah, yeah.

22 Q Do you see that in Exhibit 67
23 the letter is addressed to Quickie Vision,
24 care of your law firm, but it's really
25 referring to bills for a Quickie patent?

Alan Fell

Page 95

1 **Fell**

2 A Right.

3 Q Once again, you'd look at the
4 body of the letter, is that right?

5 A Yes.

6 Q Were you always careful to make
7 sure that you used the appropriate Re or
8 address in letters relating to Quickie or
9 S&A Rings when you communicated with
10 Mr. Sharinn?

11 MR. LODEN: Objection. Form.

12 A I would try to be specific.

13 Q But you're not certain if you
14 were, is that right?

15 MR. LODEN: Same objection.

16 A I guess I could have made
17 mistakes occasionally.

18 Q During this period you were
19 talking to Mr. Sharinn quite frequently,
20 weren't you?

21 MR. LODEN: Objection. Form.

22 BY MR. KAMINSKY:

23 Q 2002 and 2003?

24 MR. LODEN: Objection. Form.

25 A Probably.

Alan Fell

Page 96

1 Fell

2 Q So you weren't confused as to
3 which matters you were talking to him
4 about, were you?

5 A I probably could figure it out
6 from the substance of the letter. I don't
7 recall, you know, what interaction I had
8 with regard to these specific letters.

9 Q Now returning again to the
10 period during when maintenance fees were
11 due on the '160 Patent, Thelen which was --

12 A I'm sorry, are we going back to
13 the admission?

14 Q Yes.

15 During that period when Thelen
16 was counsel for Quickie with respect to the
17 '160 Patent, Thelen had an opportunity to
18 advise Quickie that maintenance fees were
19 due, isn't that correct?

20 A Uh-huh, yes, that's correct.

21 Q And to make sure that Quickie
22 paid the maintenance fees, is that right?

23 A Yes.

24 Q Rick Steiner also had an
25 opportunity during that period to advise

Alan Fell

Page 97

1 **Fell**

2 **Quickie that the maintenance fees were due,**
3 **is that true?**

4 A Well, Quickie had retained
5 patent counsel and we were relying on
6 patent counsel to notify us as to
7 maintenance fees.

8 Q And at that time, as stated to
9 the PTO, your patent counsel for the '160
10 Patent was the Thelen firm, is that right?

11 MR. LODEN: Objection. Form.

12 A That's right.

13 (Recess taken)

14 (Resumed 11:10 a.m.)

15 BY MR. KAMINSKY:

16 Q Now I mentioned to you earlier
17 that you had been reminded that patent fees
18 on a patent were due within three and a
19 half years of the issuance of patent before
20 the expiration of the period to pay the
21 patent fees on the '160 Patent.

22 Do recall me mentioning that?

23 A Yes, yes.

24 Q And you didn't recall being
25 reminded of that, is that right?

Alan Fell

Page 98

1 Fell

2 A Not specifically, no.

3 Q Well, let me show you a document
4 which has been marked as Exhibit 33, which
5 is a letter to you -- I'm sorry, a letter
6 to Dr. Colvin which shows a CC to you on
7 April 13, 2003.

8 Do you remember getting a copy
9 of that letter?

10 A Not specifically, but I'm sure I
11 did.

12 Q Now that's about the concentric
13 passive knotless suture terminator,
14 correct?

15 A Yeah.

16 Q Which is a Quickie patent,
17 correct?

18 A Yeah. That's not the '160
19 Patent. That's a different patent, the
20 '243, we'll call it the '243 perhaps.

21 Q '745 -- oh, '243 Patent, yes,
22 correct.

23 A '243.

24 Q Okay.

25 Do you see that in that letter

Alan Fell

Page 99

1 Fell

2 on the second page there is a specific
3 statement --

4 A I think it's on the first page,
5 the bottom of the first page.

6 Q Yes, you're correct. On the
7 first page there is a specific statement
8 that patent fees would be due three and a
9 half years from the issuance of the patent?

10 A Yes.

11 Q Mark Evens was an attorney at
12 the Thelen firm, is that correct?

13 A That's correct.

14 Q And he was the attorney at the
15 Thelen firm to whom Quickie initially
16 transferred the proceedings as to the '160
17 Patent, is that correct?

18 A I believe so, yes.

19 Q What was his role specifically
20 at the Thelen firm?

21 A He was, I believe, a patent --
22 he was a litigator, but I think he had done
23 patent litigation.

24 Q You're familiar with the name
25 Robert Krebs, is that right?

Alan Fell

Page 101

1 Fell
2 the exact word, but he was the initial
3 contact person with whom we were introduced
4 to at the firm and I think that we would go
5 to him first before we'd go to Krebs, I
6 think, but I think Dr. Colvin had more
7 dealings with Mr. Krebs than I did. I
8 think he went to the Patent Office with
9 Mr. Krebs on at least one or two occasions.

10 **Q Do you recall that when**
11 **Mr. Quickie took its business away from the**
12 **Thelen firm, it transferred that business**
13 **to Mr. Evans' new firm in Washington D.C.,**
14 **Stern Kessler Goldstein & Fox?**

15 A Yes.

16 **Q Were you involved in the**
17 **decision to transfer the business to**
18 **Mr. Evens' new firm?**

19 A I was aware of it because
20 Dr. Colvin had made that decision
21 primarily. I frankly probably would have
22 tried to find a smaller firm in New York
23 than a Washington firm.

24 **Q But Dr. Colvin picked --**

25 A Dr. Colvin picked this firm,

EXHIBIT S

Paul Sutton

Page 1

1

2 UNITED STATES DISTRICT COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 -----

5 QUICKIE, LLC,

6 Plaintiff,

7 vs.

07-CV-10331

8 GREENBERG TRAUIG, LLC, (RMB) (DFE)

9 et al.,

10 Defendants.

11 -----

12

13

14

15

16 DEPOSITION OF PAUL SUTTON

17 Tuesday, June 10, 2008

18 9:30 a.m.

19

20

21

22 Reported by:

23 Joan Urzia, RPR

24 JOB NO. 203573

25

COPY

Paul Sutton

Page 20

1 P. Sutton

2 testimony on those categories. I spoke to
3 people, I took notes, I reviewed documents,
4 I took notes and have brought notes with me
5 today to assist in getting you accurate
6 dates and information.

7 Q. Okay.

8 You say that you sought to obtain
9 information and documents to review the
10 categories listed on Exhibit 1.

11 What information and documents
12 did you seek?

13 A. Anything and everything having to
14 do with Quickie and that related to what I
15 understood those categories to be.

16 Q. How did you conduct that search?

17 A. I personally went to people who
18 are responsible for these various
19 functions, interviewed them, requested that
20 they provide in my office documents so that
21 I could review them, and quite candidly, I
22 confessed to having a particular interest
23 in this matter, because at Thelen I headed
24 up IP, I actually brought the intellectual
25 property practice to Thelen from our

Paul Sutton

Page 21

1 P. Sutton

2 boutique, and I actually set up at Thelen
3 their computerized docketing system that is
4 the subject of this litigation.

5 Q. You set up Thelen's docketing
6 system.

7 Did you set up Greenberg's as
8 well?

9 A. Yes, I did -- not alone, with
10 assistance from others. I did bring to
11 Greenberg a computerized docketing system
12 and established that at Greenberg as well.

13 Q. Okay.

14 We'll get to that later.

15 But I want to turn back to what
16 you -- your search for documents and your
17 interviews.

18 Who did you interview?

19 A. Several paralegals and clerks and
20 asked the assistance of people who we call
21 assistants and/or secretaries.

22 Q. Can you give me a list of names
23 that you spoke with, names of the people
24 you spoke with?

25 A. Well, I don't believe I can give

Paul Sutton

Page 28

1 P. Sutton

2 Reminders for the timely filing
3 of continuation or continuing type
4 applications, whether they be continuations
5 or continuations in part.

6 I reviewed documents and
7 representative examples of our GT -- I'm
8 going to use GT for Greenberg Traurig if I
9 can -- GT's marking of our system database
10 with the status of cases that have been
11 moved from our firm to another firm where
12 the status is marked with either the term
13 transferred and/or the term inactive so
14 that reports thereafter do not include
15 those and they thereafter do not show up on
16 future monthly, weekly or daily reports.

17 I reviewed examples of patent
18 record sheets and status docket reports if
19 files are sent from our firm to another
20 firm, and I also confirmed that the latest
21 or last status information in our system is
22 not deleted from GT's system so that we can
23 confirm at a later date, which I have, the
24 fact that our system was marked with the
25 terms transferred and/or inactive for

Paul Sutton

Page 29

1 P. Sutton

2 matters such as the transfer of the '160
3 Patent files to the Thelen firm.

4 I confirmed that the information
5 is not deleted so that this same
6 information is available as it is today and
7 can be accessed to answer questions that
8 may later arise.

9 Q. Okay.

10 A. In addition -- I mean, I obtained
11 a lot. I reviewed an April 11, 2002 piece
12 of correspondence from Todd Sharinn to Mark
13 Evens of the Thelen firm confirming that
14 back in April 2002, Mark, who I know
15 because he worked in my department at
16 Thelen, actually received all of the '160
17 Patent information and had an opportunity
18 at that point back in April of 2002 to
19 enter that into the system that I set up at
20 Thelen.

21 Q. Let me stop you there.

22 Do you have a copy of that April
23 correspondence? Did you bring one today?

24 A. If I don't have it, I'm sure -- I
25 may not have brought it with me, but I'm

Paul Sutton

Page 39

1 P. Sutton

2 to another firm who thereby assumed
3 responsibility.

4 Q. So, again, my question then is
5 why did you believe that reviewing those
6 unrelated patent docket entries was
7 relevant to your testimony today?

8 A. It would indicate that by the
9 records being marked as transferred or
10 inactive, that there would be no subsequent
11 reports that included those cases because
12 those matters were thereafter being handled
13 by the firm to whom the cases have been
14 transferred.

15 Q. And did your review of those
16 other patent docket entries confirm that
17 understanding?

18 A. It did.

19 Q. Did you keep a list of the other
20 docket entries that you looked at?

21 A. I reviewed several. I did not
22 make a list of any except the one involving
23 the '160 Patent. I thought that that would
24 be the area that you'd want to question me
25 on.

Paul Sutton

Page 49

1 P. Sutton

2 '160 Patent and it sounds like Exhibit 3 is
3 not a monthly docket report.

4 MR. CHU: He didn't say that.

5 A. I think you're either not
6 understanding my testimony or you're taking
7 issue with me.

8 Exhibit 3 is a type of report
9 provided to working attorneys and their
10 assistants and is sometimes referred to as
11 a patent record sheet. We give these and
12 refer to them by different names so that we
13 can distinguish their format.

14 Q. Let me go back then.

15 Did you review any monthly docket
16 reports concerning the '160 Patent?

17 A. I don't believe I could, no,
18 because the record was marked as having
19 been transferred to another firm. I wanted
20 a report to be generated that reflected the
21 '160 Patent. It wouldn't come out on there
22 because it was transferred to another firm
23 that assumed full responsibility and our
24 reports no longer contained the '160 Patent
25 once the entry has been made that it's been

Paul Sutton

Page 52

1 P. Sutton

2 BY MR. LODEN:

3 Q. It's a simple yes or no question.

4 A. I don't believe a simple yes or
5 no answer is appropriate, and I've already
6 indicated within my last response to you
7 the negative response and the reason for
8 it.

9 Q. So the answer is no, you did not
10 review any monthly docket reports for the
11 '160 Patent, right?

12 A. My answer is the answer I gave to
13 you already to the same question.

14 Q. When a monthly docket report is
15 printed out, what happens to it?

16 A. In the ordinary course of
17 business at our firm, monthly docket
18 reports are generated and copies thereof
19 are provided to working attorneys and their
20 assistants.

21 Q. Were you a working attorney on
22 the '160 Patent?

23 A. Not on the patent prosecution of
24 the '160 Patent, but I was associated with
25 interacting with Dr. Steve Covan on the

Paul Sutton

Page 53

1 P. Sutton

2 litigation involving Medtronic.

3 Q. Who was the working attorney then
4 that would have received the monthly docket
5 reports for the '160 Patent?

6 A. I think your question makes an
7 assumption that's not correct.

8 Q. What's that assumption?

9 A. I believe that there would be no
10 monthly docket report relating to the '160
11 Patent where our firm had been replaced in
12 all respects regarding the '160 Patent well
13 prior to that time.

14 Let be me more specific if you
15 wish me to --

16 Q. No, I think I understand your
17 answer. Let's look at Exhibit 3.

18 A. Yes.

19 Q. Which you said earlier was a
20 patent record sheet for the '160 Patent?

21 A. My time indicated that people in
22 our firm refer to Exhibit 3 as the type of
23 report that is called a patent record
24 sheet.

25 Q. Okay.

Paul Sutton

Page 60

1 P. Sutton

2 been assumed by the new attorney and that
3 it would be inappropriate for us to do
4 anything further on this matter.

5 MR. LODEN: Objection.

6 Nonresponsive.

7 A. I'm not sure I understand. What
8 was not responsive?

9 Q. My question, Mr. Sutton, is does
10 TFD entry, does the TFD entry on Exhibit 3
11 refer to whether or not the patent was
12 transferred and the date upon which it was
13 transferred?

14 A. I believe that that is the
15 occasion as a result of the Power of
16 Attorney being revoked.

17 MR. LODEN: Objection.

18 Nonresponsive to the nonresponsive
19 portion of that answer.

20 BY MR. LODEN:

21 Q. So my question is then, prior to
22 the patent being transferred on April 2,
23 2003, were monthly docket reports prepared?

24 A. I think you misspoke. When you
25 say the patent was transferred, our Power

Paul Sutton

Page 61

1 P. Sutton

2 of Attorney was revoked and a new Power of
3 Attorney given to the Thelen firm.

4 Q. Okay.

5 A. So it's not a matter of a
6 transfer of patent.

7 Q. Understood.

8 A. As much as our authority to act
9 on behalf of the client in this regard was
10 revoked.

11 Q. So prior to that transfer taking
12 place, were monthly docket reports prepared
13 for the '160 Patent?

14 A. I'm not certain that they were,
15 because I don't believe that they would be
16 necessary.

17 Q. Why?

18 A. I'm not sure I understand why you
19 think they would be. I'm not understanding
20 your question.

21 Q. My question is pretty simple.

22 Prior to the transfer on April 2,
23 2003 to the Thelen firm, Greenberg Traurig
24 was docketing and monitoring the deadlines
25 for maintenance fees on the '160 Patent,

Paul Sutton

Page 62

1 P. Sutton

2 correct?

3 A. Greenberg Traurig and others,
4 correct.

5 Q. So in connection with Greenberg
6 Traurig's monitoring and docketing of the
7 maintenance fee deadlines, were monthly
8 docket reports prepared for the '160
9 Patent?

10 A. Not after -- it's my
11 understanding that they were not generated
12 after Greenberg Traurig was notified that
13 its Power of Attorney was going to be
14 revoked and they would no longer represent
15 the client in this regard.

16 Q. Prior to that time?

17 A. Yes, well prior. I believe that
18 our firm was notified the day after the
19 Markman Hearing, September 5th, that all
20 responsibility in connection with the '160
21 Patent and the Medtronic litigation was
22 being transferred to the Thelen firm, in
23 particular Mark Evens would be leading that
24 responsibility at the Thelen firm, I
25 believe the specific date was September 5,

Paul Sutton

Page 63

1 P. Sutton

2 2002.

3 Q. Who informed you of that transfer
4 on September 5, 2002?

5 A. Our firm was notified to that
6 effect by Alan Fell and that was confirmed
7 to our firm by Dr. Steve Covan, who
8 indicated that he wanted a relative of his
9 family, Mark Evens, to assume
10 responsibility in all effects for the '160
11 Patent and the Medtronic litigation.

12 That was the first formal notice
13 that our, that we would no longer be
14 representing Quickie with respect to any
15 aspect of the '160 Patent.

16 Q. And that was a verbal notice?

17 A. The initial notice was verbal,
18 and of course written notices followed.

19 Q. Did they explain why they no
20 longer wanted Greenberg Traurig to
21 represent Quickie?

22 MR. CHU: I think he just
23 explained it.

24 A. Yes. As I just indicated in my
25 prior answer, Mark Evens, a former partner

Paul Sutton

Page 64

1 P. Sutton
2 of mine at Thelen, is related to the family
3 of Dr. Stephen Covan, and they wanted to
4 help him by transferring -- they had no
5 problem with the quality of our work, but
6 they wanted him to benefit from the monies
7 generated by the work on the '160 Patent
8 and the Medtronic litigation and all
9 aspects of those two.

10 Q. So it's your testimony then, I
11 want to make sure I got this right, it's
12 your testimony then that after September 5,
13 2002 when this conversation you say
14 occurred, Greenberg stopped preparing
15 reports, docket reports for the '160
16 Patent?

17 A. That's not my testimony.

18 Q. What part of what I said is
19 wrong?

20 MR. CHU: Please --

21 MR. LODEN: If you have an
22 objection, under the federal rules,
23 Justin, you can say, "Objection,
24 form." That's it.

25 BY MR. LODEN:

Paul Sutton

Page 66

1 P. Sutton

2 MR. LODEN: Thank you, I
3 appreciate you stopping.

4 MR. CHU: Please let me speak
5 without you interrupting me, as I've
6 allowed you to do.

7 BY MR. LODEN:

8 Q. Mr. Sutton, did Greenberg ever
9 prepare a monthly docket report for the
10 '160 Patent?

11 A. It did not generate a monthly
12 docket report after being notified that it
13 would no longer be representing Quickie
14 with respect to the '160 Patent and the
15 Medtronic litigation.

16 MR. LODEN: Objection.

17 Nonresponsive. I'll read back my
18 exact question to you.

19 BY MR. LODEN:

20 Q. Mr. Sutton, did Greenberg ever
21 prepare a monthly docket report for the
22 '160 Patent?

23 A. I don't understand your question
24 because as I've testified, well prior to
25 the date that the maintenance fee was due,

Paul Sutton

Page 67

1 P. Sutton

2 Greenberg Traurig was notified that it was
3 not to be representing Quickie and its
4 Power of Attorney was revoked. So it would
5 be inappropriate to be generating a report
6 for an ex-client who had revoked our power.

7 Q. Are you done?

8 A. I'm not sure I understand.

9 Q. Are you finished with your
10 answer?

11 A. I am.

12 MR. LODEN: Objection.

13 Nonresponsive.

14 BY MR. LODEN:

15 Q. My question is very simple.

16 As you sit here today, are you
17 aware of Greenberg ever, at any time,
18 preparing a monthly docket report for the
19 '160 Patent?

20 A. I believe I've answered that
21 question fully and given you the reasons
22 for my answer.

23 Q. So the answer is, as you sit here
24 today, you're not aware of any monthly
25 docket reports being prepared by Greenberg

Paul Sutton

Page 68

1 P. Sutton

2 for the '160 Patent?

3 A. Would you please indicate a due
4 date for which you're referring to?

5 Q. I've said it numerous times; any
6 time, any time, at any time in history.

7 A. No, I'm asking you to please help
8 me so I can answer you completely and
9 fully.

10 Would you please provide me with
11 a due date that would appear on a monthly
12 docket report that your question relates to
13 and I'll be happy to answer it.

14 MR. CHU: Steve -- can I go off
15 the record just to talk to you.

16 (Whereupon, an off-the-record
17 discussion was held.)

18 A. The monthly docket report
19 reflects due dates or matters that require
20 attention within the month thereafter.

21 I'm not aware of any due dates or
22 matters that require attention that
23 occurred affecting the '160 Patent prior to
24 our firm's Power of Attorney being revoked.

25 So that your question really, it

Paul Sutton

Page 69

1 P. Sutton

2 doesn't make sense frankly.

3 Q. Looking back at Exhibit 3, up on
4 the top left-hand corner -- and I apologize
5 for the quality of the copy here, this is
6 the way it was produced to us -- but you
7 will see it looks like GT number up there
8 on the top?

9 A. I believe that those letters
10 reflect GT number sign.

11 Q. And then out there to the right
12 there is a number.

13 What does that number reflect?

14 A. There are five digits followed by
15 a period and then six digits and the
16 letters U.S. The five digits that precede
17 the period reflects the Greenberg Traurig
18 client number assigned to that client.

19 The numerical, the six numerical
20 digits that follow that period reflect the
21 matter number for that client that this
22 relates to, and the U.S. reflects that the
23 matter that's a subject of Exhibit 3 is a
24 United States matter as opposed to one for
25 a foreign country.

Paul Sutton

Page 70

1 P. Sutton

2 Q. So then if I'm understanding that
3 entry correct, is 51822, is that the client
4 number assigned for Quickie by Greenberg
5 Traurig?

6 A. It's my understanding that the
7 number 51822 is one of several -- I'm
8 sorry, strike that, please, I may have
9 misspoken.

10 I believe the number 51822
11 references a client number associated with
12 Quickie. I don't know whether that's the
13 only client number associated with Quickie.

14 Q. Okay.

15 And then the 6 digits after the
16 period there is 010700, did I understand
17 you to say that that is the matter for
18 which this patent record sheet was created?

19 A. The number 010700 reflects the
20 matter associated with the client number
21 51822 for which this Exhibit 3 is
22 referencing, with the U.S. being United
23 States.

24 There are times that other
25 letters are used to abbreviate the names of

Paul Sutton

Page 71

1 P. Sutton

2 foreign countries other than the U.S. which
3 may carry either the same matter number or
4 the same GT client number.

5 Q. Okay.

6 Going to the right-hand column,
7 it looks like the third line, do you see
8 where there is STAT and then in the field
9 it says transfer?

10 Do you see that on the right-hand
11 side?

12 A. Yes.

13 Q. What does that entry reflect?

14 A. I believe that the letters STAT
15 refer to the status of this particular case
16 or matter. The field indicates that all
17 responsibility, the term transfer indicates
18 that, in that field indicates that our
19 firm's responsibility in all respects has
20 been revoked by the client that another
21 firm or the client is responsible for this,
22 and by the presence of the word transfer,
23 this case will not appear in certain
24 reports generated thereafter such as
25 monthly reports.

Paul Sutton

Page 72

1 P. Sutton

2 Q. So in other words, it says matter
3 number 010700 has been transferred to
4 another firm and Greenberg is no longer
5 responsible for that matter?

6 A. I believe you're trying to
7 summarize my testimony. I think my
8 testimony is accurate and you can draw your
9 own conclusions, but I think abbreviating
10 my testimony --

11 Q. Well, okay. Let me read back
12 your testimony then.

13 You said, "The field indicates
14 that all responsibility, the term transfer
15 indicates that, in that field indicates
16 that our firm's responsibility in all
17 respects has been revoked on this
18 particular case or matter."

19 A. No, I perhaps have misspoken. It
20 indicates, transfer indicates that the
21 matter has been transferred to another firm
22 per the instructions of the client.

23 Q. Okay.

24 A. And further on down on April 2,
25 2003, there is an entry that indicates that

Paul Sutton

Page 79

1 P. Sutton

2 would be required other than the normal
3 maintenance fee, there would have to be an
4 additional fee or one or more other things
5 required to be filed with the PTO.

6 Q. Okay.

7 The next column to the right EXT,
8 is that extension?

9 A. That's my understanding.

10 Q. And it says 0 there. What does
11 the 0 refer to?

12 A. That's, I believe, filled in the
13 default field -- I'm sorry, that's the
14 default entry in that field unless it's
15 modified by the person handling the
16 computerized docketing system.

17 Q. Okay.

18 Next column to the right you'll
19 see that April 2, 2003 date under the
20 column response.

21 A. Yes.

22 Q. What does that refer to?

23 A. That indicates that a response to
24 the due date for the first maintenance fee
25 was taken care of via the revocation of the

Paul Sutton

Page 80

1 P. Sutton

2 Power of Attorney and the responsibility
3 for this case.

4 That's the date of the formal
5 revocation of the Power of Attorney, but
6 that is but one of -- that date reflects
7 the date on which the PTO revoked per the
8 client's request our Power of Attorney so
9 that we would no longer be responsible for
10 the payment of any maintenance fees.

11 Q. Well, the response in that column
12 heading, does that refer to a response to
13 the maintenance fee deadline or
14 responsibility?

15 A. In this case, we enter -- if our
16 Power of Attorney is revoked and we're
17 asked to no longer do anything with respect
18 to, for example, here the '160 Patent, or
19 anything associated with that '160 Patent,
20 we put in that field the date of the formal
21 revocation of our authority to do anything
22 in that regard, our authority to act as
23 attorneys for the client in that regard,
24 and that's the reason for the entry of
25 4/2/2003 in each of the M1, M2 and M3, the

Paul Sutton

Page 81

1 P. Sutton

2 three maintenance fees there.

3 That indicates that someone else,
4 this report indicates that the client has
5 asked and instructed someone else to do
6 this activity.

7 MR. LODEN: Objection.

8 Nonresponsive.

9 BY MR. LODEN:

10 Q. The response -- do you see the
11 column entitled Response, do you see that?

12 A. Yes.

13 Q. Doesn't that heading reflect the
14 field in which the software records the
15 date upon which a response was taken to the
16 item which was docketed?

17 A. Only if our Power of Attorney had
18 not been revoked and had we filed a
19 response, would that date of the filing of
20 the response have been entered there.

21 If our Power of Attorney had not
22 been revoked or, for example, Mark Evens
23 firm, the Thelen firm, knowing that it
24 would be taking responsibility for the '160
25 Patent, it would enter the date that it

Paul Sutton

Page 88

1 P. Sutton

2 got this right.

3 I believe earlier today, and tell
4 me if I'm wrong, but I believe earlier
5 today, you said that when you came to
6 Greenberg Traurig, you assisted in setting
7 up the docketing system that we're
8 referring to here?

9 A. When I left Thelen to join
10 Greenberg Traurig, I set up the
11 computerized docketing system for Greenberg
12 Traurig that provides the type of
13 information that you see here in Exhibit 3.

14 Q. And as part of that setting up
15 process, were there procedures put in place
16 or any other sort of directives given to
17 Greenberg Traurig employees on how to use
18 the system?

19 A. When I moved my group from Thelen
20 to Greenberg Traurig, it included a number
21 of attorneys and one or more paralegals who
22 were already familiar and running the
23 computerized system at Thelen, and we
24 simply moved that entire group to Greenberg
25 Traurig so that we had people who for years

Paul Sutton

Page 89

1 P. Sutton

2 had operated the computerized docketing
3 system and knew its ins and outs and from
4 time to time benefitted from support from
5 the software company.

6 Q. And those same people that you
7 said moved from Thelen to Greenberg, were
8 those the same paralegals that, or the same
9 staff, excuse me, that was responsible for
10 entering the data on the patent record
11 sheet reflected in Exhibit 3?

12 A. I don't like -- the people who
13 entered data on Exhibit 3 were among those
14 that moved with me from Thelen to Greenberg
15 Traurig.

16 Q. So then who entered the data on
17 Exhibit 3?

18 A. One of several paralegals who are
19 or have been employees at Greenberg
20 Traurig.

21 Q. Do you know in particular who by
22 name?

23 A. I can't be certain, so I'd rather
24 not guess.

25 Q. Okay.

Paul Sutton

Page 93

1 P. Sutton

2 Q. And where do paralegals obtain
3 the data that they enter into the docketing
4 system?

5 A. By way of example, on our firm's
6 receipt of the revocation of Greenberg
7 Traurig's Power of Attorney on April 2,
8 2003, that document from the Patent and
9 Trademark Office would be the basis of the
10 entry of the information in the database.

11 Q. But that document was sent to the
12 attorney in charge, correct, is addressed
13 to the attorney of record at Greenberg,
14 right?

15 A. I'm not sure I understand your
16 question.

17 Q. Well, my question is: How did
18 the document that you referred to get into
19 the hands of the paralegal who was entering
20 the data into the computerized docketing
21 system?

22 A. I believe that there is a
23 procedure set up where communications from
24 the U.S. Patent and Trademark Office are
25 sorted and separated during the mail,

Paul Sutton

Page 96

1 P. Sutton

2 Q. Okay.

3 How about for the GT number, the
4 client matter number that we spoke to
5 earlier on the top left corner of Exhibit
6 3, who told the paralegal or how -- strike
7 that.

8 How did the paralegal know what
9 client matter number to place in that
10 field?

11 A. When the mail is sorted, that
12 information may appear on the document or
13 documents that arrive in the mail, so
14 that's one way that the paralegal can
15 obtain that information.

16 Another way would be to see what
17 client the mail relates to, and then our
18 firm has a computerized system that our
19 folks can access to see what client number
20 and what matter number it relates to.

21 So enough information is usually
22 on the mail to permit the paralegal to
23 glean that information and to go to the
24 proper part of the database.

25 Q. The '160 Patent was issued by the

Paul Sutton

Page 100

1 P. Sutton

2 relevant files were handled properly.

3 I did not do that alone. I did
4 that together with Todd Sharinn because it
5 was his relationship and his client.

6 Q. Understood.

7 You said that Dr. Covan agreed to
8 give us, Greenberg Traurig, this
9 responsibility.

10 What responsibility are you
11 referring to, the responsibility for
12 docketing the deadlines for the '160
13 Patent?

14 A. He gave us Power of Attorney to
15 handle the '160 Patent and its enforcement
16 against Medtronic, both.

17 Q. Well, when you take on a -- okay,
18 you said both, it sounds like there are two
19 pieces of the responsibility, enforcement
20 and --

21 A. No, there are no two pieces, no.

22 Q. Okay.

23 A. It's all part of the same ball of
24 wax. If you're enforcing a patent against
25 another party or seeking to license them or

Paul Sutton

Page 117

1 P. Sutton

2 Greenberg was still responsible for
3 monitoring the maintenance fee deadlines on
4 the patent, right, that's what you said
5 earlier?

6 MR. CHU: Objection.

7 A. Our power had not been revoked as
8 of April 11, 2002.

9 Q. So is it then your testimony that
10 it's standard procedure in the system that
11 you set up at Thelen that that system would
12 include deadlines for payment of fees for
13 patents for which Thelen was not
14 responsible at the time?

15 A. At Thelen, it was my practice
16 that where we understood that there was
17 either a likelihood or a certainty that one
18 or more matters were to be transferred to
19 our firm, that on receipt of information
20 having to do with patents, such as the '160
21 Patent and the number, for example, by
22 virtue of the April 11, 2002 letter to Mark
23 Evens there, it was our practice to enter
24 that information and any deadlines
25 associated with that patent into the

Paul Sutton

Page 118

1 P. Sutton

2 computerized docketing system in force and
3 operating at Thelen.

4 Q. Why? If you're not responsible,
5 why enter the deadlines?

6 MR. CHU: Objection.

7 A. I just explained why. If we had
8 reason to believe that a relative of ours,
9 namely a relative of Mark Evens is going to
10 be transferring matters relating to the
11 '160 Patent to us, even if it's not a
12 certainty, we would, it was my practice
13 back then to enter that information into
14 the system so that the very matter that
15 occurred would not occur.

16 In other words, if it was in the
17 system and if it was monitored as it was
18 our practice when I was at Thelen, there
19 would have been, the maintenance fee would
20 have been paid by them. So there would be
21 no abandonment.

22 Q. And is that still your practice
23 today, that even if you at Greenberg don't
24 have responsibility for maintenance fee
25 deadlines on a particular patent, if you

Paul Sutton

Page 121

1 **P. Sutton**

2 A. If we have, as I've given the
3 example, reason to believe that a file will
4 be transferred to us, and according to my
5 practice I enter the information into our
6 system so that we can monitor that, if the
7 matter is transferred to us formally and we
8 are given a Power of Attorney, that
9 information is already in the system but we
10 have the double-check that when the
11 physical files are transferred to us, when
12 the paralegal goes to enter the data, it's
13 already there and you have that
14 double-check.

15 **Q. Okay.**

16 **So then let's talk about**
17 **procedures to make sure nothing falls**
18 **through the cracks when files are**
19 **transferred from Greenberg, what happens**
20 **then?**

21 A. Okay. Let's take the specifics.

22 When I was at Thelen, it was the
23 practice to do the exact same thing so that
24 when Todd Sharinn on April 11, 2002 gave
25 Mark Evens the identification of the patent

Paul Sutton

Page 122

1 P. Sutton

2 number, the 160, it was my practice then,
3 and I assume was still the practice at
4 Thelen, to enter into their computerized
5 docketing system the '160 Patent and its
6 maintenance fee deadlines so that it could,
7 as those dates became due, pay those
8 maintenance fees regardless of whether or
9 not it got further information.

10 In other words, it was my
11 practice at Thelen, it was -- it is my
12 practice at Greenberg Traurig. I'm
13 surprised, frankly, that it was not done at
14 Thelen, because that was our practice when
15 I was there.

16 Q. So this April 11, 2002 letter,
17 which, frankly, I'll be honest with you,
18 Mr. Sutton, I don't have included in my
19 list of documents to discuss today, it
20 sounds like it's a critical part of your
21 testimony, at least with respect to the
22 matter that we're discussing today, so I'll
23 ask you: Do you have a copy of it?

24 A. I don't.

25 Q. Does your counsel have a copy of

Paul Sutton

Page 123

1 **P. Sutton**

2 **it?**

3 **MR. CHU: Let's just go off the**
4 **record.**

5 **(Recess taken from 1:19 p.m. to**
6 **1:22 p.m.)**

7 **(Exhibit 5, Correspondence dated**
8 **4/11/02, marked for identification, as**
9 **of this date.)**

10 **BY MR. LODEN:**

11 **Q. Mr. Sutton, the reporter has just**
12 **handed you what's been marked as Exhibit 5.**

13 **A. Yes.**

14 **Q. Is this the April 11, 2002**
15 **correspondence that you were referring to?**

16 **A. What I've been referring to in my**
17 **testimony regarding a Todd Sharinn April**
18 **11, 2002 letter to Mark Evens includes two**
19 **sheets, the letter which appears to respond**
20 **to a request for Mark Evens for the patent**
21 **number, but in addition, attached to the**
22 **letter itself is a photocopy of the**
23 **Greenberg Traurig physical file cover sheet**
24 **with information on there, further**
25 **information on there, that permits Thelen**

Paul Sutton

Page 124

1 P. Sutton

2 to enter that into their system without
3 even having to go online.

4 They have all of the information
5 available to them between the first and the
6 second sheet of Exhibit 5.

7 MR. LODEN: Objection.

8 Nonresponsive. Move to strike.

9 BY MR. LODEN:

10 Q. Mr. Sutton, why was Todd Sharinn
11 sending this letter to Mark Evens?

12 A. It appears that Mark Evens
13 requested this information perhaps to enter
14 the information into the computerized
15 docketing system of Thelen.

16 Q. Well, you say it appears. Do you
17 or do you not know?

18 A. Just from looking at it, "It was
19 a pleasure speaking to you today" -- see,
20 I'm familiar from my conversations with
21 Steve Colvin as to what was going on in
22 terms of during this period where he wanted
23 Mark Evens to benefit from this entire
24 effort of handling the '160 Patent and the
25 action against Medtronic so that -- and I

Paul Sutton

Page 128

1 P. Sutton

2 Q. Your counsel just made my point.

3 You're speculating that anything is
4 possible as to why --

5 A. No, that's not correct --

6 Q. As to why he made that request,
7 isn't that correct, Mr. Sutton?

8 A. No. Again, you've disregarded my
9 testimony.

10 The attachment to the first page
11 of Exhibit 5 is not the file history.
12 That's my point. It is the cover of the
13 physical file, not the file history, that
14 gives the data that will be used or would
15 be used by Thelen to enter the '160 Patent
16 within their computerized docketing system
17 for purposes of monitoring the deadlines
18 for paying the maintenance fees.

19 Q. Turn to the second page.

20 A. Yes.

21 Q. What piece of information on the
22 second page of Exhibit 5 tells Thelen Reid
23 when the first maintenance fee is due on
24 the '160 Patent?

25 A. Every bit of that information

Paul Sutton

Page 129

1 P. Sutton

2 yields that -- for example, the patent
3 number, the date granted, the serial
4 number, the filing date, the title, the
5 group number, the assignee -- every piece
6 of information on the second page of
7 Exhibit 5 which has a Bates number QLLC
8 000029 provides Mark Evens and Thelen with
9 the information to enable it to put into
10 their computerized docketing system to be
11 able to monitor and take care of the
12 maintenance fees on the '160 Patent.

13 Q. And is that the only purpose for
14 that information, or does that information
15 have other purposes as well?

16 A. I don't understand your question.

17 Q. Well, it seems like you're saying
18 the only possible reason that this
19 information could have been transferred to
20 Mark Evens was because he wanted to enter
21 it into the docketing system?

22 A. Could you please show me where I
23 testified that way?

24 Q. Well, are there other reasons --

25 A. No, please show me where I have

Paul Sutton

Page 136

1 P. Sutton

2 patent at issue?

3 A. Please tell me what you mean by
4 file wrapper.

5 Q. Well, Todd Sharinn refers to the
6 file wrapper in Exhibit 5 and attaches this
7 sheet.

8 A. I'm asking you what you mean by
9 it.

10 Q. That's what I'm talking about,
11 file wrapper.

12 A. I don't know what Todd Sharinn
13 means. I do know that what is attached as
14 constituting the second page of Exhibit 5
15 is a photocopy of the cover of what people
16 refer to as the file wrapper, which
17 contains the file history.

18 The reason I'm asking you that
19 question is people often confuse file
20 history with file wrapper, and I just want
21 to understand if you're asking me a
22 question to be answered under oath what you
23 mean by it.

24 Q. Okay.

25 Well, the document that is

Paul Sutton

Page 137

1 P. Sutton

2 attached as page 2 to Exhibit 5, that's a
3 copy of the file wrapper?

4 A. It's my understanding --

5 Q. Did I get that right?

6 A. It's my belief that it is a
7 photocopy of the outside cover containing
8 the file wrapper, the physical
9 manila-colored 3-part file, physical file,
10 that patent attorney, we as patent
11 attorneys use to conclude, that includes
12 the file history but also correspondence
13 with the client, things that the Patent and
14 Trademark Office doesn't see.

15 I'm making that distinction just
16 so we're clear with one another. I don't
17 believe that the entire file wrapper
18 accompanied the first page of Exhibit 5. I
19 believe what Todd meant was the cover, a
20 photocopy of the cover of the file wrapper,
21 which is our physical file.

22 Q. Well, looking at page 1, he
23 doesn't say I enclose a copy of the cover
24 of the file wrapper, does he? He didn't
25 say that there, did he?

Paul Sutton

Page 144

1 P. Sutton

2 Patent and the litigation matters involving
3 the '160 Patent were going to be
4 transferred to Mark Evens at Thelen.

5 Q. So that information about that
6 conversation between Alan Fell and Todd
7 Sharinn came secondhand to you, Todd
8 Sharinn told you about that conversation,
9 you weren't present for the conversation,
10 correct?

11 A. That's correct.

12 Q. For a patent for which Greenberg
13 is responsible for the maintenance fees and
14 a maintenance fee deadline appears on a
15 monthly docket report, what is GT's
16 standard operating procedure then when that
17 deadline appears on a monthly operating
18 report?

19 A. We check with the client in some
20 instances if we have reason to believe that
21 the client may not want to incur the fees
22 associated with that. If the patent is
23 involved in a litigation, we pay the
24 maintenance fee and bill the client because
25 we can't imagine that the client would want

Paul Sutton

Page 145

1 P. Sutton

2 the patent to lapse if it's involved in a
3 litigation. And that payment would occur
4 at or near the initial deadline.

5 Q. What happens if the patent is not
6 in litigation and you have no reason to
7 believe that the patent would want to allow
8 the patent -- the client would not want to
9 allow the patent to expire?

10 A. If there are circumstances where
11 we're unable to get a hold of the client,
12 either through the client traveling or
13 whatever and -- we try to contact the
14 client.

15 If we're unable to, if in doubt,
16 we would pay the maintenance fee and bill
17 the client -- or we would not pay the
18 maintenance fee and since the client didn't
19 get back to us and pay it after that
20 initial deadline, there are subsequent
21 deadlines, and simply the client, because
22 it did not get back to us, has to pay a
23 higher disbursement for payment after that
24 initial deadline, but the patent would not
25 lapse because the maintenance fee would be

Paul Sutton

Page 146

1 P. Sutton

2 paid.

3 We don't pay those maintenance
4 fees. Our standard practice is not to pay
5 the maintenance fees months in advance.

6 Q. Earlier this morning we talked
7 about the docketing systems and some this
8 afternoon.

9 A. May I correct myself?

10 Q. Sure.

11 A. There have been some clients who
12 wish to look at an entire year in advance
13 when they view their portfolio, and rather
14 than be bugged with reminders during the
15 year, if their portfolio is large, they
16 make a decision earlier in the year as to
17 all those patents it wishes to maintain and
18 all those it doesn't wish to maintain, and
19 we sometimes get instructions en masse to
20 simply pay all those maintenance fees and
21 we do so throughout the year without our
22 having to interact with the client
23 thereafter.

24 Q. Okay.

25 Focusing then on the docketing

Paul Sutton

Page 161

1 **P. Sutton**

2 A. I just never had occasion to
3 consider a transaction like that.

4 Q. Is there someone at Greenberg
5 with responsibility for maintenance of the
6 docketing, computerized docketing system?

7 A. I believe we have a service
8 contract or support contract with the
9 vendor.

10 Q. Who is the vendor?

11 A. DIAMS. When we had the PATS
12 system, and the systems are the same in the
13 context of what they do, we had a support
14 arrangement with PATS.

15 Q. Okay.

16 The vendor would install the
17 software on Greenberg's computer system?

18 A. Are you asking me what actually
19 occurred?

20 Q. What actually occurred, yes,
21 thank you.

22 A. The vendor would certainly play a
23 role in the installation of the system on
24 Greenberg's computers.

25 Q. And I think you just answered the

Paul Sutton

Page 162

1 P. Sutton

2 question, but let me be sure, we're talking
3 about a software package that runs on a
4 standard desktop, it's not a separate
5 computer that the system is maintained on?

6 A. You're making an assumption that
7 I don't know is accurate.

8 Q. Okay.

9 A. I don't know whether there is a
10 server on which the software is installed
11 which would not be the same as an attorney
12 or a paralegal's desktop computer.

13 Q. Okay.

14 MR. LODEN: Let me ask the
15 reporter to mark Exhibit 6, I believe.

16 (Exhibit 6, Greenberg Traurig's
17 Responses to Plaintiff's
18 Interrogatories, marked for
19 identification, as of this date.)

20 BY MR. LODEN:

21 Q. Mr. Sutton, the reporter has just
22 handed you what's been marked as Exhibit 6.

23 Do you recognize this document?

24 A. This appears to be a copy of
25 Greenberg Traurig's responses to

Paul Sutton

Page 167

1 P. Sutton

2 that last question?

3 Q. Yeah.

4 My question was: Do you know if
5 Greenberg Traurig charged Quickie for
6 monitoring the deadlines on the '160
7 Patent, and your response was I'd have to
8 review the invoices.

9 A. Well, that's one thing I'd want
10 to review, but I believe that in the
11 response to interrogatory number 16 it
12 indicates that GT voluntarily monitored the
13 '160 Patent before Quickie revoked all
14 powers of attorney given to GT as to the
15 '160 Patent no later than March 4, 2003.

16 The use of the word monitor as I
17 used it, since I signed this response on
18 August 13, 2007, is that we put it into our
19 system so that we would have the
20 information available to us, and we didn't
21 charge the client -- that's what the term
22 voluntarily suggests -- we put it into the
23 system and did not charge the client for
24 doing so.

25 Q. So then I take it --

Paul Sutton

Page 168

1 **P. Sutton**

2 A. Or I'm not aware of any instance
3 where we charged the client for simply
4 having that information in our system.

5 Q. So then you don't need to go back
6 and look at the invoices. You're saying
7 that no charge was incurred or levied?

8 A. Well, I would want to check the
9 invoices to see if, in fact, if there is an
10 entry for charging, I'd want to be able to
11 confirm that my testimony is accurate.

12 But the voluntarily monitoring
13 that's referred to in response to
14 interrogatory number 16 refers to our
15 having it in our computerized docketing
16 system.

17 Q. And the volunteer language there
18 means, you intended that to mean that
19 Greenberg was not charging Quickie for that
20 monitoring service?

21 A. That's what I understood to be
22 the case when I signed the response to the
23 interrogatory.

24 Q. Okay.

25 If I could get you to turn to

Paul Sutton

Page 169

1 P. Sutton

2 interrogatory number --

3 A. I'm sorry, and it also meant that
4 we had no responsibility -- you have to
5 look at the question and the answer no that
6 precedes the statement about voluntarily
7 monitoring. So really in fairness you have
8 to look at the entire response to
9 interrogatory number 16.

10 MR. LODEN: Objection. Move to
11 strike. Nonresponsive.

12 BY MR. LODEN:

13 Q. Look at interrogatory number 11,
14 please. It begins on the bottom of page 5
15 and goes over to page 6. Do you see where
16 I'm at?

17 A. Yes.

18 Q. The response starts off with, "GT
19 does not believe it receives such a notice
20 or reminder," and then the part I want to
21 talk about is the second sentence, "GT has
22 searched its records and not found such a
23 notice or reminder and its patent attorneys
24 do not recall having received one."

25 Were you involved in the search

Paul Sutton

Page 172

1 P. Sutton

2 **consulted?**

3 A. I don't know, as I'm sitting here
4 today, what the names of any other patent
5 attorneys who were consulted, what those
6 names are, or if there are any others.

7 Q. In that search, what were they
8 looking for?

9 A. The response to interrogatory
10 number 11.

11 Q. Right, but interrogatory number
12 11 asks if GT ever received any notice or
13 reminder concerning the need to pay
14 maintenance fees.

15 So my question is what notices or
16 reminders were being searched for just --

17 A. Any, any.

18 Q. Any.

19 So that would include notices or
20 reminders that came from the Patent and
21 Trademark Office?

22 A. It would include any notice or
23 reminder.

24 Q. How about notices or reminders
25 that were kicked out from the computerized

Paul Sutton

Page 173

1 **P. Sutton**

2 **docketing system?**

3 A. There would be no reminder or
4 notice on the computerized docketing system
5 because our Power of Attorney was revoked
6 well prior to the deadline in May -- I'm
7 sorry, the deadline for paying the first
8 maintenance fee.

9 So there would be no reminder or
10 report that would include that for that
11 reason. We were no longer representing
12 Quickie in that regard. Our power had been
13 revoked. It would be inappropriate for us
14 to be involved thereafter.

15 Q. So then it's your testimony then
16 that after -- after the Power of Attorney
17 was revoked, that the computerized
18 docketing system no longer would generate
19 reminders or notices of maintenance fees
20 due on the '160 Patent?

21 A. I've given you a lot of testimony
22 earlier today with respect to that issue
23 and I think you've mischaracterized my
24 prior testimony.

25 Q. Okay. I think your prior

Paul Sutton

Page 192

1 **P. Sutton**

2 A. I'm not sure I understand your
3 question. The forms say what they say.

4 **Q. Okay.**

5 A. I have no personal knowledge
6 regarding this particular exhibit except to
7 recognize our IP department was originally
8 located at 200 Park Avenue, then moved to
9 885 and then moved back to 200 Park.

10 So we've had a couple of changes
11 of address for use by the Patent and
12 Trademark Office, so that we get this stuff
13 sent directly to us.

14 **Q. Okay.**

15 So tell me and I'll see if I can
16 make this quicker, in page number 382 --

17 A. Yes.

18 **Q. -- this is the form that Todd**
19 **Sharinn used to inform the Patent and**
20 **Trademark Office where to send all**
21 **correspondence other than fee**
22 **correspondence concerning the '160 Patent?**

23 A. I actually don't have personal
24 knowledge as to Exhibit 7 so that when Todd
25 is here tomorrow and testifies, he should

Paul Sutton

Page 196

1 P. Sutton

2 number.

3 Q. Do you have any idea why if on
4 April 11, 2002 Todd Sharinn was sending the
5 file wrapper to Mark Evens so that Mark
6 Evens could docket the fees, do you have
7 any idea why months later in October 2002
8 Mr. Sharinn was telling the PTO that he was
9 still the person to receive correspondence
10 about fees?

11 A. I don't believe that the
12 revocation of the Power of Attorney had
13 occurred as yet so that technically
14 Greenberg Traurig was still the attorney of
15 record in that case.

16 Q. Same question with respect to
17 this conversation that you referenced
18 between Mr. Fell and Mr. Sharinn on
19 September 5, 2002 where Mr. Fell
20 purportedly told Mr. Sharinn that Thelen is
21 coming on to take over the case, do you
22 have any idea why Mr. Sharinn was filing
23 PTO fee address notifications after that
24 conversation took place?

25 A. If it was, if Greenberg Traurig

Paul Sutton

Page 197

1 P. Sutton

2 was still attorney of record until its
3 power was revoked we would want the pat at
4 any time and trademark office to have a
5 correct address to send correspondence. So
6 that would be one reason to file such a
7 notice.

8 Q. Well, wasn't the purpose of the
9 file wrapper being sent to Thelen so that
10 they could start monitoring and docketing
11 the deadlines, isn't that what you
12 testified to earlier?

13 A. I don't understand why what you
14 just said conflicts with what I just said.
15 I don't understand. Your question suggests
16 some conflict. I just don't understand.

17 If Greenberg Traurig was still
18 the attorney of record and wished to have a
19 correct address at the Patent and Trademark
20 Office to receive mail from the Patent and
21 Trademark Office until its power was
22 revoked. The fact that Mark Evens could or
23 should have been entering data in the
24 Thelen docketing system would have nothing
25 to do with the formal notices until the

Paul Sutton

Page 212

1 P. Sutton

2 **confusion later down the road?**

3 A. In circumstances such as the one
4 that's in litigation that I'm giving
5 testimony in, months and months prior to
6 transfer of files or revocation of the
7 Power of Attorney, the new law firm was
8 given all information that it needed or
9 could possibly want in connection with
10 assuming responsibility so that whether or
11 not it did anything with that information
12 is another matter, but in effect in the
13 present circumstances Mark Evens began the
14 assumption of responsibility even prior to
15 Allan Fell telling Todd Sharinn that our
16 firm was being replaced and our power was
17 going to be revoked because Mark Evens was
18 actually sitting at the table in the
19 Markman Hearing and he wasn't an attorney
20 of record.

21 So that process began at least as
22 early as April 11, 2002 where Mark Evens
23 was monitoring and had information and had
24 the ability to enter any and all deadlines
25 in the system at Thelen.

Paul Sutton

Page 216

1 P. Sutton

2 to my prior answer as well.

3 Q. What about pending deadlines in
4 the matter that's being transferred, should
5 those be mentioned?

6 MR. CHU: Well, you're asking,
7 you know --

8 MR. LODEN: I'm sorry, was that
9 an objection?

10 A. There are instances where pending
11 deadlines, especially if they are imminent
12 where it is desirable, not under the
13 present circumstances with the Quickie
14 matter however.

15 Q. And who determined that it was
16 not desirable under present circumstances
17 with the Quickie matter that it was not
18 desirable to reference pending deadlines,
19 who made that determination?

20 A. I think you assume a fact not in
21 evidence. So I --

22 Q. What assumption is that?

23 A. That there was a determination.
24 I think the determination was made by the
25 client in revoking well prior to the

Paul Sutton

Page 217

1 P. Sutton

2 deadline the Power of Attorney so that the
3 client made that decision and Mark Evens
4 made the decision or Thelen made the
5 decision not to pay timely that maintenance
6 fee.

7 Q. Did Quickie say Mr. Sutton, I
8 want you to transfer the files and I don't
9 want you to tell them what the deadlines
10 are for maintenance fees?

11 A. It's clear from the revocation
12 that the client wanted us not to be
13 involved in any way any further, and the
14 revocation was not partial, it was
15 complete, and the client had the benefit of
16 counsel other than Greenberg Traurig who
17 had the knowledge and the ability and the
18 wherewithal to pay the maintenance fee and
19 to docket it, namely Alan Fell, Steve
20 Colvin himself who was a very sharp
21 individual, Mark Evens and people at Thelen
22 and then there's the issue of Maier & Maier
23 could in my view have reinstated that
24 patent so that it was not lapsed.

25 MR. LODEN: Objection.

Paul Sutton

Page 218

1 P. Sutton

2 Nonresponsive. Move to strike.

3 BY MR. LODEN:

4 Q. My question was very simple
5 again. I'll reread it to you.

6 Did Quickie say Mr. Sutton, I
7 want you to transfer the files and I don't
8 want you to tell them what the deadlines
9 are for maintenance fees? Did Quickie ever
10 say that to you?

11 A. I don't recall anyone at Quickie
12 telling me, using those words in any
13 conversation with me.

14 Q. Have you ever heard that those
15 words were used in a conversation with Todd
16 Sharinn?

17 A. I have no personal information
18 one way or another, but I do, it is clear
19 that well prior to the maintenance fee
20 deadline, the initial deadline which
21 payment could be made thereafter that
22 Thelen for many months had the information,
23 could have and should have had the
24 information in its docketing system and
25 could have and should have paid that

Paul Sutton

Page 249

1 P. Sutton

2 this. So I do, I can say that this is,
3 this relates to the claims of infringement
4 of the '160 Patent against Medtronic.

5 Q. Okay.

6 And that's matter number 0 --

7 A. And also possibly Guidant
8 Corporation, if you'll see at the end of
9 the first paragraph because that was a
10 potential target as well, infringer.

11 As we're talking about this, a
12 couple of things come to mind.

13 While we went back and forth
14 regarding letters to and from clients or to
15 and from new attorneys of record --

16 Q. Let me just -- there wasn't a
17 question pending, so what are you doing
18 here?

19 A. Well, this refreshes my
20 recollection on something that has to do
21 with my testimony here today and that
22 concerns the -- you asked me previously
23 about letters accompanying papers or files
24 or whatever going to or from new attorneys
25 or coming from other attorneys to my firm,

Paul Sutton

Page 250

1 P. Sutton

2 and I just wanted to be clear that, because
3 I hesitated about what is good practice or
4 whatever, that I didn't want that to be
5 misconstrued as anything other than our
6 view, my view, my personal view that when
7 Quickie revoked our Power of Attorney that
8 we had no responsibility whatsoever for the
9 '160 Patent thereafter.

10 If that was not clear, it's
11 important that I make that clear on the
12 record. This representation letter,
13 Exhibit 14, just brings this to mind that
14 here Exhibit 14 is we're taking on
15 responsibility of a matter, but earlier you
16 talked about transferring of the matter to
17 Thelen. Once Thelen assumed responsibility
18 by virtue of our revocation of our Power of
19 Attorney, we had no responsibility
20 thereafter.

21 Q. Are you done with that statement?

22 A. Yes, yes.

23 MR. LODEN: Objection.

24 A. What I'm doing is clarifying
25 prior testimony that I gave you.

Paul Sutton

Page 271

1 **P. Sutton**

2 **refusal to answer any questions about --**

3 A. I said if you want to waste your
4 time and ask me specific questions
5 regarding Exhibit 20, I prepared you for
6 the fact that this is something that you
7 and/or your firm had prepared that I have
8 not seen before and that I didn't want you
9 to waste your time.

10 But go ahead and ask me what
11 you'd like and I'll give you an answer as
12 to each with respect to Exhibit 20.

13 **Q. Mr. Sutton, were you aware that**
14 **Todd Sharinn had promised Quickie to**
15 **provide notice before maintenance fees were**
16 **due on the '160 Patent?**

17 A. What time frame are you talking
18 about, please?

19 **Q. When you hired Todd Sharinn, when**
20 **Greenberg Traurig hired Todd Sharinn.**

21 A. I don't believe the premise of
22 your question is accurate.

23 **Q. What premise is inaccurate?**

24 A. Regarding a promise. I believe
25 you misspoke.

Paul Sutton

Page 273

1 P. Sutton

2 Q. -- will you read that into the
3 record, please.

4 A. This is page 2, the last sentence
5 of the very first paragraph, yes?

6 Q. Will you read that in the record,
7 please.

8 A. Yes.

9 "We, namely Pepe & Hazard" --

10 Q. Does it say -- stop.

11 A. Please let me finish -- "will
12 notify you regarding payment of the
13 maintenance fees several months before they
14 are due." Signed by Todd S. Sharinn on
15 behalf of Pepe & Hazard.

16 Q. Where in that last sentence does
17 it say we, meaning Pepe & Hazard, will
18 notify you regarding payment?

19 A. I'll refer you to the upper left
20 corner of the very first page of Exhibit
21 21, Pepe & Hazard, this letter is being
22 written on behalf of Pepe & Hazard by Todd
23 S. Sharinn.

24 Q. So were you aware that Todd S.
25 Sharinn had written this letter when he was

Paul Sutton

Page 274

1 **P. Sutton**

2 **hired by Greenberg Traurig?**

3 A. I had no personal information
4 about this letter at or about the time that
5 Todd Sharinn was hired, and I don't believe
6 I've seen anything in our records that
7 would indicate an assumption of
8 responsibility that may have been
9 undertaken by Pepe & Hazard.

10 MR. LODEN: Objection.

11 A. That was part of our engagement.

12 MR. LODEN: Objection.

13 Nonresponsive. Move to strike.

14 BY MR. LODEN:

15 Q. Mr. Sutton, are you aware of Todd
16 Sharinn ever telling Quickie that Greenberg
17 Traurig would not monitor the maintenance
18 fee deadlines after Todd moved to
19 Greenberg?

20 A. I can't answer your question
21 because the premise is not accurate.

22 Q. What premise is not accurate?

23 A. I'm not aware of any personal
24 promise made by Todd Sharinn. I see
25 reference to a statement in Exhibit 21,

Paul Sutton

Page 275

1 P. Sutton

2 where is reference by Mr. Sharinn about
3 Pepe & Hazard's undertaking
4 responsibilities during Pepe & Hazard's
5 representation of Quickie, but I see
6 nothing about any that would suggest any
7 personal assumption of responsibility by
8 Todd Sharinn individually.

9 Q. Are you aware of Todd Sharinn
10 ever telling Quickie that Pepe & Hazard's
11 responsibility for providing notice about
12 maintenance fees was not being transferred
13 to Greenberg when Todd moved to Greenberg?

14 A. Are you talking about prior to
15 the time that Todd Sharinn joined Greenberg
16 Traurig?

17 Q. I'm talking about at the time he
18 joined Greenberg Traurig.

19 A. I don't recall knowing or meeting
20 Todd Sharinn at or about the time he was
21 hired by Greenberg Traurig.

22 Q. At any time, are you aware of
23 Todd Sharinn telling Quickie that Greenberg
24 Traurig would not honor the commitment that
25 you say Pepe & Hazard made in Exhibit 21?

Paul Sutton

Page 276

1 **P. Sutton**

2 A. The premise of your question is
3 ridiculous in the sense that it suggests an
4 obligation on the part of Greenberg Traurig
5 to honor an obligation of another law firm
6 that previously represented Quickie. I
7 really don't understand the premise or the
8 content of your question. It makes no
9 sense.

10 Q. Maybe you're misunderstanding my
11 question.

12 A. I don't think so.

13 Q. Well, let me try it again.

14 As you sit here today, do you
15 know whether Todd Sharinn ever told Quickie
16 that Greenberg would not provide the notice
17 of maintenance fees that you say Pepe &
18 Hazard committed to provide as reflected in
19 Exhibit 21?

20 MR. CHU: Objection.

21 A. You've mischaracterized my
22 testimony and --

23 Q. I'm asking --

24 A. Please let me finish. If you
25 don't get the answer you like, you

Paul Sutton

Page 278

1 P. Sutton

2 notice in Exhibit 7?

3 MR. CHU: Objection.

4 A. You are confusing -- your prior
5 questions had to do with an obligation of
6 Pepe & Hazard that might or might not have
7 existed while they represented Quickie.
8 There is nothing that I'm aware of, and
9 it's ridiculous to suggest that Greenberg
10 Traurig would assume a questionable
11 obligation that may have been undertaken by
12 Pepe & Hazard prior to Greenberg's
13 representation of Quickie.

14 It makes no sense whatsoever and
15 the premise of your question, frankly, is
16 ridiculous. I'm sorry to use terms that
17 strong, but where you're going makes no
18 sense whatsoever and the question makes no
19 sense.

20 Until you showed me Exhibit 21, I
21 never testified about Pepe & Hazard in
22 connection with any obligation possible or
23 otherwise that they might have undertaken
24 to Quickie. So I just think my response to
25 the prior question is appropriate here as

Paul Sutton

Page 286

1 P. Sutton

2 & Hazard, if any, to Quickie prior to
3 Greenberg Traurig's representation of
4 Quickie.

5 Your questions really are, I'm
6 sorry, but make no sense.

7 Q. I'm trying to find common ground
8 with you, Mr. Sutton.

9 A. No. This is not a negotiation to
10 find common ground. I'm here to give you
11 truthful testimony.

12 Q. Okay. Well, let's see if this
13 one works for you then.

14 Would you agree with me that when
15 the file was transferred from Pepe & Hazard
16 to Greenberg Traurig, Greenberg Traurig had
17 no obligation to provide advanced notice of
18 maintenance fees for the '160 Patent?

19 A. I don't understand your question.
20 I'm sorry.

21 Q. You know --

22 A. At the time that Greenberg
23 Traurig was retained by Quickie, it
24 undertook obligations to perform legal
25 services to Quickie, and from that date

Paul Sutton

Page 287

1 P. Sutton

2 forward I'm not aware of any agreement.

3 It's ridiculous to suggest an
4 agreement that Greenberg Traurig undertook
5 obligations of a prior firm. It really
6 makes no sense, I'm sorry.

7 Q. I'm not suggesting that they did.

8 A. I'm sorry, but you did suggest
9 that we did, and I'm sorry, but I cannot
10 let you -- I must disabuse you of that
11 concept. It just makes no sense.

12 Q. You're misunderstanding my
13 question, but I'll move on.

14 At some point, though, you would
15 agree with me Greenberg Traurig did take on
16 the responsibility for monitoring and
17 docketing maintenance fee deadlines on the
18 '160 Patent, correct?

19 A. You've asked me those questions
20 and I gave you answers previously today and
21 I'm not going to repeat them again. I
22 mean, why go back over stuff that you've
23 asked me and I've answered?

24 Q. I'm trying to make sure that your
25 testimony is clear.

Paul Sutton

Page 289

1 P. Sutton

2 '160 Patent at some point, and your
3 response was you've already asked me those
4 questions and I'm not going to repeat my
5 answers again.

6 So my question is: Do you have
7 any reason to supplement those prior
8 answers, or do you believe that they are
9 still accurate and correct, as you sit here
10 right now?

11 A. To augment and supplement my
12 prior testimony, all of the data
13 transferred from the PATS computerized
14 docketing system to the DIAMS computerized
15 docketing system, all of that data was
16 transferred so that what was put into DIAMS
17 corresponded to what was previously in the
18 PATS system. That's number one.

19 Number two, to the extent that Al
20 Jacobs' name appears on Exhibit 8, his name
21 was added in connection with administrative
22 responsibilities.

23 Three, at the time that Greenberg
24 Traurig's Power of Attorney was revoked, it
25 is my view that it had no further

Paul Sutton

Page 290

1 P. Sutton

2 responsibility to Quickie and that that
3 responsibility lay with Thelen.

4 Other than that, I don't wish at
5 the present time to augment or correct or
6 to supplement any of my testimony that I
7 gave previously today.

8 Q. Nothing else at all?

9 A. If I have additional information
10 to share with you, I will, I'll feel
11 comfortable offering that to you and you
12 can take it, if you're willing.

13 MR. LODEN: I'll ask the reporter
14 to mark Exhibit 22.

15 (Exhibit 22, Document, marked for
16 identification, as of this date.)

17 BY MR. LODEN:

18 Q. Mr. Sutton, you've just been
19 handed what's been marked as Exhibit 22.

20 Have you seen this document
21 before?

22 A. I believe I have seen Exhibit 22
23 prior to today.

24 Q. When did you last see Exhibit 22?

25 A. I do not recall.

Paul Sutton

Page 291

1 P. Sutton

2 Q. Did you look at it during your
3 preparation for today?

4 A. I may have. I reviewed many,
5 many documents so that I may have, but I
6 don't recall.

7 Q. Do you see in the regarding line
8 it references Quickie, LLC versus
9 Medtronic, do you see that?

10 A. I do.

11 Q. And then Civil Action Number
12 02-CV-1157, do you see that?

13 A. I see those numbers.

14 Q. Do you recall if that's the case
15 number assigned to the Quickie versus
16 Medtronic litigation?

17 A. I do not recall from memory the
18 civil action number.

19 Q. How did you become aware that
20 Thelen Reid was going to be substituted for
21 Greenberg Traurig in that litigation?

22 A. I became aware through a number
23 of instances of events. I became aware
24 from Steve Colvin that he wanted to help
25 his family's relative Mark Evens in

Paul Sutton

Page 292

1 P. Sutton

2 connection with the income derived from
3 handling matters that we were handling.

4 The fact that -- let me give you
5 those. The fact that Mark Evens asked to
6 monitor and counsel Quickie in connection
7 with the Medtronic and 160 matters that we
8 were handling for Quickie and that Steve
9 Colvin asked us to cooperate and to,
10 cooperate with him in that regard.

11 The communications between Mark
12 Evens, myself and Mark Evens and Todd
13 Sharinn gave that indication, the fact that
14 Mark Evens of Thelen sat at the table, at
15 counsel's table during the Markman Hearing
16 is another instance.

17 The fact that Allan Fell told
18 Todd Sharinn the day after the Markman
19 Hearing, September 5, 2002, that Thelen was
20 going to replace Greenberg Traurig.

21 This Exhibit 22, the October 15,
22 2002 letter, I think, there were
23 indications over several months that this
24 was likely going to happen, notwithstanding
25 what Allan Fell refers to in the next to

Paul Sutton

Page 293

1 P. Sutton

2 last paragraph, "I want to personally thank
3 you for the superb job you have done in
4 litigating this matter."

5 If you're doing a superb job, you
6 don't transfer the work to another firm,
7 except under special circumstances such as
8 this, where he wanted to help one of his
9 relatives.

10 Q. Allan Fell wanted to help one of
11 his relatives?

12 A. Steve Colvin and Quickie wanted
13 to help Mark Evens, who was a relative of
14 Stephen Colvin's family.

15 Q. And how did you know that
16 Dr. Colvin had that desire?

17 A. He personally told that to me
18 himself.

19 Q. In person or over the phone?

20 A. Possibly both. He shared a
21 number of things with me and I shared a
22 number of things with him in person and
23 over the phone, if you're interested in
24 what those were.

25 Q. When did those conversations take

Paul Sutton

Page 294

1 **P. Sutton**

2 **place?**

3 A. They took place, they began
4 during the summer of 2001 and occurred then
5 and thereafter.

6 Q. So when did Dr. Colvin tell you
7 that he wanted to give the income from this
8 litigation to his family member?

9 A. Well, he let us know when I very
10 first met Dr. Colvin in person at his
11 offices at the hospital, I think it was on
12 a weekend, his office had a remarkable view
13 because it was a clear day, a view of the
14 East River because I'm a boater, I'm a
15 sailor -- he indicated that he was
16 considering giving the matter to Mark
17 Evens.

18 I informed him that I knew Mark
19 Evens, that he's a former partner of mine
20 and that I headed up the practice that Mark
21 was part of, and I gave him information
22 regarding the number of litigations that I
23 was involved in, and it was the gray hair
24 or no hair experience factor that I think
25 influenced Steve, that he indicated to that

Paul Sutton

Page 295

1 P. Sutton

2 effect that he wanted us to negotiate with
3 Medtronic, see if we could settle it, if
4 not to litigate.

5 He also indicated that he had a
6 very fine relationship with Medtronic where
7 they relied on him for ideas and inventions
8 and that he felt that his existing
9 relationship with Medtronic would influence
10 them in terms of Medtronic's actions and
11 possible settlement.

12 Q. Who else was present when
13 Dr. Colvin --

14 A. I didn't finish. You want to
15 know the remainder of the conversation?

16 Q. Sure.

17 A. I indicated to Dr. Colvin the
18 potential problems associated with, that
19 there were no guarantee on the outcome of a
20 fight with Medtronic, that they had
21 resources to put into the defense, and I
22 indicated to him that there were questions
23 that they would raise about infringement
24 because the patent, the '160 Patent has a
25 focus which was not identical with the

Paul Sutton

Page 296

1 P. Sutton

2 product that Medtronic was marketing and
3 there were genuine questions about how the
4 claims would be interpreted and whether or
5 not there would be an ultimate finding of
6 infringement, and I explained to him about
7 the Markman Hearing and how there would be
8 a de novo Markman Hearing by the Court of
9 Appeals for the Federal Circuit, so that he
10 understood that these cases are often
11 litigated through appeal because sometimes
12 the district court judge's decision on
13 Markman is disregarded by the Court of
14 Appeals for the Federal Circuit.

15 So I gave him explanations as to
16 what to expect from the litigation because
17 I don't believe he had ever been through
18 one of these patent infringement fights
19 previously, and there were other things
20 that we discussed, but why don't you ask me
21 your next question.

22 Q. My next question is anything else
23 that you discussed?

24 A. Yes. I got into discussions
25 about damages because sometimes you can

Paul Sutton

Page 297

1 P. Sutton

2 win, but the attorneys' fees can exceed the
3 amount of damages that you can recover.

4 So we discussed -- he had a hope
5 that he would recover 8 figures, \$10
6 million or more from Medtronic. I tried to
7 temper -- managing client expectations is a
8 tricky business and not realizing that the
9 patent would be gutted and rendered almost
10 worthless by the re-examination, I tried to
11 prepare him for the possibility that you
12 could win, but that you might not wind up
13 with anything because we were not taking
14 this case on a contingency basis, this was
15 going to be on a fee basis.

16 We discussed -- I asked him
17 whether he had licensed any other parties,
18 and he indicated no, he had not, and I
19 explained to him that if he had that that
20 would enhance his chances of success in the
21 court.

22 I asked him if he ever marketed a
23 product covered by the '160 Patent because
24 that would enhance his chances in the
25 court. He said no.

Paul Sutton

Page 299

1 P. Sutton

2 us were in the room together -- what I just
3 testified to was discussed some in person,
4 some by phone. Some of those were
5 discussed between the two of us while I was
6 negotiating with Hal Patton at Medtronic.

7 Q. On the phone conversations, was
8 anyone else on the phone other than you and
9 Dr. Colvin?

10 A. I don't recall anyone else being
11 on the phone.

12 Q. And you've mentioned that Todd
13 Sharinn accompanied you to Dr. Colvin's
14 office --

15 A. Actually, he brought me to
16 Dr. Colvin's office to introduce me to him
17 because he was familiar with Dr. Colvin. I
18 had not met him before. Although I had
19 heard of his reputation as a thoracic
20 surgeon.

21 Q. And was it at that meeting that
22 Dr. Colvin informed you that he wanted to
23 transfer the file to Mark Evens to give
24 Mr. Evens the revenue?

25 A. I believe it was at that meeting

Paul Sutton

Page 300

1 P. Sutton

2 that he informed us or me that he had, he
3 knew somebody affiliated with his family
4 who was in the business of litigating
5 patents, namely Mark Evens, and it was just
6 a coincide that Mark and I knew each other
7 because we were at the same firm. He came
8 in while I was heading up the IP practice
9 there.

10 Q. What I'm trying to find out,
11 though, is when did Dr. Colvin tell you I
12 want to give the work to Mark because I
13 want to give him the money?

14 A. I had the feeling from the very
15 beginning, including that very first
16 meeting, that there was a possibility,
17 possibly a strong possibility that at any
18 time this work would or could be
19 transferred to Mark Evens because of the
20 nature of the conversations I've described.

21 MR. SCOTT: Just hang on a
22 second. Just because I want to speed
23 this up.

24 MR. LODEN: Thank you.

25 MR. SCOTT: With all due respect,

Paul Sutton

Page 301

1 P. Sutton

2 Mr. Sutton, we let you go on and give
3 your jury argument and all that. His
4 question was simply when did
5 Dr. Colvin tell you that he wanted to
6 give the case to Evens and you went on
7 to I had this feeling. So I'm just
8 asking you --

9 THE WITNESS: Okay, it began with
10 his asking us to permit Mark to
11 monitor it and that we should
12 cooperate with Mark and give him
13 copies of documents so that he could
14 independently guide and counsel and
15 represent Dr. Colvin and Quickie.

16 So it was not a sudden thing that
17 occurred. It occurred over time where
18 initially he may be aware of Mark
19 Evens and the relationship, then
20 asking us to share and to permit Mark
21 to monitor, and then his indicating
22 that he wanted to help Mark.

23 BY MR. LODEN:

24 Q. And how did he indicate that he
25 wanted to help Mark?

Paul Sutton

Page 302

1 **P. Sutton**

2 A. By making statements to the
3 effect that he'd like Mark to get involved,
4 words to that effect, which to me I
5 interpreted to mean Mark would take an
6 increasing role and an increasingly
7 important role headed towards his taking
8 over the case.

9 Q. So then Dr. Colvin never actually
10 said I want Mark to get involved because I
11 want him to get the fees for this case?

12 A. I don't remember the specific
13 words that Dr. Colvin used, but that's my
14 interpretation because there would be no
15 other reason for Mark to be involved, if
16 the client thought our work was superb and
17 we had more experience than Mark, and Mark,
18 I don't know that Mark has a technical
19 background. He has handled litigation, but
20 I believe that that was the obvious reason.

21 MR. LODEN: If I could get the
22 reporter to mark Exhibit 23, please.

23 (Exhibit 23, Fax dated 11/11/02,
24 marked for identification, as of this
25 date.)

Paul Sutton

Page 308

1 P. Sutton

2 Q. Okay.

3 Did he call you or did you call
4 him?

5 A. I don't recall who initiated the
6 call.

7 Q. Okay.

8 Do you recall why it is that if
9 Mr. Evens' correspondence in Exhibit 23 was
10 directed to Todd Sharinn why you ended up
11 talking to Mr. Evens about the file
12 transfer?

13 A. Yes. Mark Evens was a former
14 partner of mine at Thelen. Part of my
15 intellectual property department. I had a
16 fine relationship with him. Frankly, I
17 welcomed the opportunity to say hello to
18 him because I hadn't spoken to him in a
19 while. So the transfer of these files
20 opened up an opportunity for me to say
21 hello to him or if he called me to have a
22 nice conversation with him.

23 Q. Okay.

24 At the end of the first sentence
25 there you reference relevant files relating

Paul Sutton

Page 309

1 P. Sutton

2 to the above-referenced litigation.

3 Do you see that?

4 A. I do.

5 Q. What files are you referring to
6 there?

7 A. Those would be physical files
8 that related to the Quickie versus
9 Medtronic litigation.

10 Prior to that time, Mark had
11 received from Todd Sharinn possibly the
12 entire file wrapper, I just don't know, but
13 certainly the information on the first
14 cover of the file wrapper with Todd's April
15 11, 2002 letter. So that anything that we
16 had that enabled us to prosecute this
17 litigation is something that we will have
18 turned over to Mark so that he could
19 continue that.

20 Q. Do you know if the patent record
21 sheet was included in those files that were
22 transferred?

23 A. Well, Mark had that information
24 on the patent record sheet already. I
25 don't know whether that was included in

Paul Sutton

Page 310

1 P. Sutton

2 this because I don't believe I personally
3 physically handled the assembly of the
4 documents in the boxes.

5 Q. Who did handle that assembly?

6 A. I don't know the specific name,
7 but that would normally be done by a
8 litigation, a patent litigation paralegal.

9 Q. Okay.

10 The first -- the paragraph that
11 begins finally, the last paragraph there --

12 A. Yes.

13 Q. You say, "Finally, for the
14 benefit of our mutual client Quickie" --
15 why was Quickie a mutual client if you were
16 transferring the litigation to Thelen?

17 A. I don't understand your question.

18 Q. Well, was Quickie still a client
19 of yours after the litigation was
20 transferred to Thelen?

21 A. The revocation of --

22 Q. I'm talking about in October '02.

23 A. I know. The revocation of our
24 Power of Attorney involving the '160 Patent
25 I believe occurred in 2003.

Paul Sutton

Page 314

1 P. Sutton

2 and it looks like it was faxed from Paul
3 Jergensen of Greenberg Traurig, that's the
4 paralegal you referred to previously, if
5 you look at the first page, fax cover page?

6 A. I see the title paralegal under
7 his name.

8 Q. I'm on the first page.

9 A. I'm sorry, okay, Exhibit 25, I
10 see. Yes, I see Paul A. Jergensen.

11 Q. And that is a paralegal at, he is
12 a paralegal at Greenberg Traurig, correct?

13 A. I believe he was as of the date,
14 as of October 16, 2002.

15 Q. And then turning to the second
16 page dated October 16, 2002, it looks like
17 he's writing to someone at Thelen Reid &
18 Priest.

19 Do you see that?

20 A. Yes.

21 Q. And on the RE line he references
22 Quickie, LLC versus Medtronic, Inc.

23 Do you see that?

24 MR. CHU: He hasn't got the page
25 yet, hold on.

Paul Sutton

Page 315

1 P. Sutton

2 MR. LODEN: No, he's at the page
3 I'm talking about.

4 MR. CHU: Oh, I'm sorry.

5 A. Bear with me.

6 Q. You're looking at the right --

7 A. No, excuse me -- okay.

8 Now, I'm looking at the page
9 ending in 98948 Bates number of Exhibit 25.

10 Q. That's correct.

11 A. Yes.

12 Q. Mr. Jergensen references Quickie,
13 LLC versus Medtronic, Inc.

14 Do you see that?

15 A. I do.

16 Q. And then he states "our reference
17 number."

18 Do you have an understanding as
19 to who "our" refers to there, is that
20 Greenberg Traurig?

21 A. That would be Greenberg Traurig's
22 reference number.

23 Q. And then the number there
24 51822.010400, do you see that?

25 A. I see that number.

Paul Sutton

Page 316

1 P. Sutton

2 Q. If you look back to Exhibit 13 --

3 A. I have it in front of me.

4 Q. That's the matter entitled
5 Quickie, LLC versus Medtronics, correct?

6 A. Correct.

7 Q. Did you ask Mr. Jergensen to send
8 this letter to Thelen Reid & Priest?

9 A. Actually, Mark Evens in Exhibit
10 23, his letter of October 11th, 2002 on the
11 fourth line in the first paragraph starting
12 in the third line, please send the file,
13 see attention of Shari Markovitz-Savit, it
14 was Mark Evens that requested that this be
15 done.

16 Q. Well, he requested that be done
17 and he made that request to Todd Sharinn.
18 My question is how did Paul Jergensen end
19 up being the one to respond to Mr. Evens'
20 request?

21 A. Well, you'll note in the second
22 paragraph Mr. Sutton has instructed me to
23 get these documents into the hands of Mark
24 Evens pronto.

25 Q. Okay.

Paul Sutton

Page 317

1 P. Sutton

2 A. So Paul Jergensen is reflecting
3 my request that he take care of that ASAP.

4 Q. Okay.

5 And actually, this letter from
6 Mr. Jergensen dated October 16, 2002, if
7 you look at the last sentence of the first
8 paragraph, he says a copy of my cover
9 letter accompanying the files is faxed
10 herewith.

11 A. I'm sorry, where are you?

12 Q. The last sentence of the first
13 paragraph. A copy of my cover letter
14 accompanying the files is faxed herewith.

15 Do you see that?

16 A. Yes, I see that sentence.

17 Q. And then if you turn to the next
18 page, you'll see a two-page letter written
19 by Mr. Jergensen.

20 A. Yes, with item number 5
21 reflecting the '160 Patent and its file
22 history and prior art as being forwarded on
23 October 16th.

24 MR. LODEN: Objection.

25 Nonresponsive.

Paul Sutton

Page 318

1 P. Sutton

2 BY MR. LODEN:

3 Q. So the two-page, the last two
4 pages of Exhibit 25, the letter from
5 Mr. Jergensen, the two-page letter dated
6 October 16, 2002, it also references
7 Quickie, LLC versus Medtronic.

8 Do you see that?

9 A. It references not only Quickie,
10 LLC versus Medtronic, but also it makes
11 express reference to U.S. Patent No.
12 6,066,160 file history and prior art next
13 to number 5 on the first page of the letter
14 to Shari Markovitz-Savit dated October 16,
15 2002.

16 Q. And the reference for the client
17 matter number on this document is
18 51822.010400, correct?

19 A. It appears on the top, in the
20 reference clause of the first page of Paul
21 Jergensen's letter to Markovitz-Savit.

22 Q. Where in the 137 items listed
23 here on this letter would there be
24 reference to the patent record sheet for
25 the '160 Patent? Is it included in that

Paul Sutton

Page 319

1 P. Sutton

2 list?

3 A. Item number 5 is broad enough to
4 include that? You're saying that the
5 patent record sheet in Exhibit 3 was
6 included as part of item number 5.

7 Certainly -- the description
8 under item number 5 on Exhibit 25 I read as
9 broad enough to contemplate inclusion of
10 that patent record sheet of Exhibit 3.

11 BY MR. LODEN:

12 Q. If I could get you to turn to
13 Exhibit 8?

14 A. 8?

15 Q. 8.

16 A. It's in front of me.

17 Q. The two-page document that's in
18 Exhibit 8 was this document, the two-page
19 document, was it transferred to Shari
20 Markovitz-Savit at Thelen Reid as part of
21 this letter that we're looking at in
22 Exhibit 25?

23 A. Very possibly under item number
24 5, but I personally did not pack a copy of
25 Exhibit 8 in the box at the time that Paul

EXHIBIT T

Todd Sharrin

Page 1

1

2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK

4

5 QUICKIE, LLC,

6

Plaintiff,

7

vs.

07-CV-10331

8

GREENBERG TRAURIG, LLC,

(RMB) (DFE)

9

et al.,

10

Defendants.

11

12

13

14

15

16

DEPOSITION OF TODD SHARRIN

17

Wednesday, June 11, 2008

18

9:30 a.m.

19

20

21

22 Reported by:

23

Joan Urzia, RPR

24

JOB NO. 203575

25

COPY

Todd Sharrin

Page 16

1 T. Sharinn

2 Q. And you were there for about how
3 long?

4 A. A couple of years, few years.

5 Q. Okay.

6 And then you moved to the east
7 coast?

8 A. I did.

9 Q. And Pepe & Hazard or --

10 A. No, no, I took a coaching job
11 with Yale, so I worked with a patent
12 boutique called St. Onge.

13 Q. And where is that firm?

14 A. New Haven.

15 Q. And then you were there for how
16 long?

17 A. About a year, and then I took a
18 job somewhere else for coaching hockey. I
19 was head coach at Villanova. The early
20 part of my legal career followed my hockey
21 career.

22 Q. So you were working at a
23 different law firm while you were moving
24 from different coaching positions?

25 A. Well, playing and coaching, yes.

Todd Sharrin

Page 17

1 T. Sharinn

2 Q. Well, then, just walk me through.

3 So you were then at Villanova?

4 A. Yes, sir.

5 Q. And that's in Pennsylvania?

6 A. It is.

7 Q. And what's the firm there?

8 A. I did a lot of work for St. Onge
9 actually by proxy.

10 Q. Okay. So you were in a sense
11 freelancing a bit?

12 A. Yes.

13 Q. All right.

14 And so what's the next firm that
15 you associate yourself with during this --

16 A. Well, pretty much my hockey
17 career came to an abrupt end and I went and
18 worked for one of my law school professors,
19 it was a firm called Levenson Lerner.

20 Q. And where is that?

21 A. New York City.

22 Q. And you were there for how long?

23 A. About a year.

24 Q. And then you --

25 A. Bryan Cave.

Todd Sharrin

Page 54

1 T. Sharinn

2 (Exhibit 34, Letter dated 5/4/01,
3 marked for identification, as of this
4 date.)

5 BY MR. SCOTT:

6 Q. On the second page you'll see
7 some different files, if you will, that are
8 to be transferred or not transferred.

9 This is a May 4, 2001 letter from
10 one of your former colleagues at Pepe &
11 Hazard to Alan Fell in connection with your
12 prospective departure from Pepe to
13 someplace else.

14 A. Right. I didn't -- I'm very
15 funny -- it's not funny, but it's just the
16 way I do things -- when I've left jobs in
17 the past, until I was walking out the door,
18 I never told anybody where I was going
19 unless I felt it was appropriate. I never
20 felt it was their business. I look at them
21 as my past, not my future.

22 Q. So they didn't know you were
23 going to Greenberg?

24 A. I didn't tell them anything other
25 than I was going to be leaving, and then

Todd Sharrin

Page 55

1 T. Sharinn

2 when it was time to go, I gave them my
3 address as to where they should mail the
4 stuff.

5 Q. In this particular instance, Mr.
6 Urbanik is writing to Alan on behalf of
7 Pepe & Hazard to basically say do you want
8 the files to stay here or do you want them
9 to go with Todd Sharinn?

10 A. They didn't want it to go,
11 obviously. I mean, they're a law firm.

12 Q. At this time frame, do you have
13 any general recollection as to the amount
14 of annualized income that's coming off of
15 the Quickie group, if you will?

16 A. At the time it seemed like a lot.
17 In retrospect, it was very, very little.

18 Q. Any kind of numbers that go with
19 that?

20 A. I would say probably 115, maybe
21 100 at the most.

22 Q. Well, that was worth a lot more
23 than it is now?

24 A. Yeah, I'm saying at the most. It
25 was really -- maybe even less than that. I

Todd Sharrin

Page 56

1 T. Sharinn

2 don't remember offhand.

3 I remember this, that as an
4 associate I always was treated differently
5 because I always had some origination of my
6 own, and it wasn't just from them, I had
7 other clients, but it was never enough to
8 be treated really different, like to be put
9 into the realm of we've got to make this
10 guy a partner sooner than later.

11 Q. But this is a tidy book of
12 business on a pretty --

13 A. Again, as I'm reflecting on it, I
14 think it's probably lower than that. I
15 think probably realistically that was my
16 whole book of business, with other clients
17 too, I was thinking maybe like 75, 80, now
18 that I'm looking about it a little more. I
19 don't know offhand.

20 Q. So they don't want it to go, of
21 course. You're expecting it to go with
22 you, right?

23 A. That was the indication I had
24 gotten when I had spoken to Steve and Alan.

25 Q. And in fact, Quickie has followed

Todd Sharrin

Page 69

1 T. Sharinn

2 Q. And what are those, is that the
3 licensing negotiations?

4 A. They were negotiations, right, to
5 try and get a licensed deal for Quickie
6 because Medtronic, while they were -- I
7 guess we'll talk about that obviously --
8 while they were expressing some interest in
9 the technology, weren't being particularly
10 overly interested, and so Steve wanted to
11 go out and build a sense of urgency and
12 necessity.

13 Q. So he has this idea, and is it
14 just the '160 Patent that he's trying to
15 shop to Ethicon U.S. surgical or Medtronic,
16 or is there other stuff as well?

17 A. No, just the 160, as I recall.

18 Q. So the 160, you get it patented
19 while you're at Pepe & Hazard, right?

20 A. I did, yes.

21 Q. Applied for in 1998, issued in
22 May of 2000, does that jive with your
23 recollection?

24 A. Sounds about right.

25 Q. So it's prior to you going over

Todd Sharrin

Page 70

1 T. Sharinn

2 to Greenberg Traurig --

3 A. Right.

4 Q. -- that it issues?

5 A. Right.

6 The other matter, this General
7 Corp, I have no recollection at all of what
8 that is.

9 Q. All right.

10 I just want to come back to -- so
11 were there negotiations with Ethicon U.S.
12 Surgical and Medtronic prior to the
13 issuance of the '160 Patent or only after?

14 A. Prior.

15 Q. Prior.

16 A. There were no -- we should
17 understand something, there were no real
18 negotiations. There was a non-disclosure
19 agreement/non-compete agreement that I
20 negotiated with each of those specific
21 companies that were entered into by both
22 those companies.

23 Q. Just so you can look?

24 A. So look and talk, because the
25 application was still pending.

Todd Sharrin

Page 71

1 T. Sharinn

2 Ethicon, I'm not quite sure we
3 were even on the plane back from
4 Cincinnati, it was where they were located
5 before they had said they weren't
6 interested. They couldn't have shown less
7 interest at the meeting if they tried.

8 In fact, I remember Steve was
9 very upset because the guy that was
10 supposed to meet with us didn't even come
11 to meet with us, and we ate in a cafeteria
12 which he made a comment about.

13 U.S. Surgical, they were nicer,
14 but I don't think they took even a week
15 before they started avoiding phone calls,
16 and then it ultimately took my pressing
17 their lawyer to say, guys, my guys are a
18 little anxious here to know what's going
19 on, can someone give us some information.
20 And they basically at that point said they
21 were going to punt.

22 Q. All right.

23 Medtronic, it reflects license
24 agreement. There is something there?

25 A. There was negotiations that were

Todd Sharrin

Page 72

1 T. Sharinn
2 ongoing, even when I was at Pepe & Hazard.
3 I think the agreement actually was entered
4 into at Pepe & Hazard, and I also think
5 shortly after the agreement was entered
6 into that Medtronic was already trying to
7 break the agreement.

8 Q. All right.

9 But you do recall that there was
10 a license and development agreement that
11 was executed in connection with Medtronic?

12 A. Oh, sure, absolutely.

13 Q. While we're at it, let's go
14 ahead -- Exhibit 21, which was marked
15 yesterday --

16 A. Do I need this document any
17 longer?

18 Q. Yeah, for a second.

19 A. Okay, then I'll hold onto it.
20 I've got it. Is this what you're
21 looking for?

22 Q. Yeah.

23 A. Okay.

24 Q. These are the ones that were
25 marked yesterday, just so you know as we go

Todd Sharrin

Page 94

1 T. Sharinn
2 that, but it was very sporadic and it was
3 always -- again, this was part of the
4 problem is that Steve, like I said, would
5 call me sometimes at 3 in the afternoon,
6 sometimes at 3:00 in the morning to just
7 talk about anything from boats, the
8 Yankees -- he wasn't really a Yankees,
9 Grasse would be more Yankees -- but boats
10 or his divorce at one point, at other
11 points it was his new wife, about patents,
12 about how much Thelen Reid was getting on
13 his nerves, how much they were billing him,
14 what they were doing.

15 And I would constantly tell him
16 that I was no longer engaged by him in that
17 capacity, that I felt uncomfortable talking
18 to him about it.

19 Listen, let's understand
20 something. I would have loved continue
21 doing this case for them, and in my heart I
22 think I could have won at least on the
23 liability issues. But I was replaced, and
24 I knew that, and I told him flat out I
25 would be very happy to pick up the pieces

Todd Sharrin

Page 95

1 T. Sharinn

2 where Thelen Reid had started to drop them
3 and try to fix for him what they were
4 doing, but that I was really not permitted
5 to do what he was asking me to do.

6 At one point he asked me if I
7 wanted to consult or if I would consider
8 consulting. At another point he actually
9 suggested I open a matter and be co-counsel
10 in a very undefined way. But it didn't,
11 never happen really.

12 Q. Now I want to try and segregate,
13 if I can.

14 A. Sure.

15 Q. And I don't know that based on
16 the testimony that you can --

17 A. It's hard, because again, you
18 have to understand who the people you are
19 dealing with. It sounds like you knew
20 Steve.

21 Q. For a time.

22 A. Well, to know Steve for any real
23 period of time and to have real involvement
24 with him, I don't think there's a person
25 who has known him that would argue with me

Todd Sharrin

Page 96

1 T. Sharinn

2 that Steve could be a lot of different
3 things at the same time to a lot a
4 different people in the same room.

5 Q. All right.

6 Did you understand your
7 responsibility with regards to the '160
8 Patent to cease upon your being replaced in
9 connection with the Medtronic litigation?

10 A. Absolutely.

11 Q. Now, this is a different
12 question. If you don't understand the
13 difference, just stop me.

14 A. That's fine.

15 Q. Did you understand your
16 responsibility with regards to Quickie as
17 their intellectual property counsel at
18 Greenberg Traurig to cease with your
19 replacement in the Medtronic litigation?

20 MR. KAMINSKY: Objection to the
21 form of the question.

22 A. That's how I understood it.
23 Let's understand something. I got a call
24 at around 9:30 at night from Alan Fell. I
25 was out celebrating from a different case

Todd Sharrin

Page 97

1 T. Sharinn

2 that we had just won, a trademark case --

3 Q. By the way, I think you had
4 reason to celebrate with regards to the
5 Quickie Markman Hearing as well.

6 A. Thank you. Well, you know, we
7 felt good. But I actually didn't celebrate
8 that night because I saw the writing on the
9 wall, knew where it was going.

10 One of the only times my ex-wife
11 and I had any real conversation about my
12 career was at night. I left the
13 celebration after I got that call because I
14 felt like my life at Greenberg Traurig, as
15 I understood it and how I defined it, had
16 pretty much been confirmed to go now in a
17 much different direction than I had hoped.

18 So my understanding was, yes,
19 that -- how to put this other than they had
20 just taken everything that had to do with
21 Quickie away from me.

22 Q. And what I'm trying to
23 understand, Mr. Sharinn, is that prior to
24 let's just say the Markman Hearing, your
25 involvement with Quickie was multifaceted

Todd Sharrin

Page 101

1 T. Sharinn

2 being litigated, the '160 Patent. I was
3 the attorney of record with the PTO for
4 that matter, and Greenberg Traurig was the
5 firm of record.

6 Subsequent to the Markman
7 Hearing, whenever the date was, whether it
8 was the next day or the day after the
9 ruling was issued, my responsibilities to
10 that patent immediately terminated by
11 actions of Steve Colvin and Alan Fell.
12 They told me flat out, transfer the files,
13 you're no longer responsible.

14 Q. And I hear you loud and clear on
15 that.

16 A. Okay.

17 Q. I'm simply asking now did you see
18 that as extending to your responsibilities
19 or relationship with Quickie as a whole?

20 A. Yes, sir.

21 Q. Separate and apart from just the
22 '160 Patent?

23 A. I don't know that there was
24 anything else for Quickie other than the
25 '160 Patent and the litigation or defense

Todd Sharrin

Page 105

1 T. Sharinn

2 is separate and apart from the '160 Patent
3 enforcement or defense in the
4 re-examination, did you see yourself as
5 having a continuing relationship with
6 Quickie in any other respect once you got
7 that call following the Markman Hearing?

8 A. No.

9 Q. Fair enough.

10 A. And just to add to that, I do not
11 recall there being any other matters
12 besides the litigation or the actual
13 Quickie patents management at that time
14 that were active.

15 Q. All right.

16 And let me just try and step
17 through those hoops now.

18 There was a re-examination, there
19 was a re-examination matter opened at
20 Greenberg Traurig for the Quickie '160
21 Patent.

22 A. Okay.

23 MR. KAMINSKY: Objection to the
24 form of the question.

25 Q. And it's the point 0109 matter

Todd Sharrin

Page 106

1 T. Sharinn

2 that is billed to for re-examination
3 purposes. So you had some involvement, as
4 I think you testified following the Markman
5 Hearing in connection with the
6 re-examination.

7 A. Let me see if I can put it this
8 way. Steve Colvin became very disenchanted
9 with Thelen Reid very early on in the
10 process. Alan Fell, I'm not sure was ever
11 enchanted with them, I don't know one way
12 or the other. I only know what I remember
13 him saying to me.

14 They called me on a few occasions
15 to talk to me about what was going on in
16 the case. I obviously lent them my ear
17 because I wanted the case back, it was a
18 good case, I was really proud -- you asked
19 me before what was I proud of, I was proud
20 of the Markman results.

21 Q. As you should have been.

22 A. Okay, I thought we did a really
23 good job and we got a result that nobody
24 expected to get, most importantly
25 Medtronic. And if I'm not mistaken, and

Todd Sharrin

Page 135

1 T. Sharinn

2 embarrassing as it is to say in this day a
3 little bit of puffing on my part internally
4 for Greenberg Traurig.

5 Q. Exhibit 7.

6 A. Exhibit 7.

7 MR. KAMINSKY: Exhibit 7, we have
8 it here.

9 BY MR. SCOTT:

10 Q. Mr. Sharinn, if you would just
11 take a moment to look at that.

12 A. Okay.

13 Q. This is a piece of correspondence
14 sent on Greenberg Traurig's letterhead by
15 Marsha Twitty --

16 A. To Marsha Twitty.

17 Q. I'm sorry, to Marsha Twitty from
18 the PTO, right?

19 A. From the PTO.

20 Q. And it's sent by Linda Garamone?

21 A. Right.

22 Q. Who is she?

23 A. Linda was my patent paralegal at
24 Greenberg Traurig.

25 Q. And what is being sent to the

Todd Sharrin

Page 136

1 **T. Sharinn**

2 **Patent Office?**

3 A. This would be just a pro forma
4 document. We had moved offices while at
5 Greenberg Traurig, we were in the lipstick
6 building originally and then moved over to
7 200 Park Avenue, and my guess is she had
8 run this out for every matter I had ever
9 had any kind of responsibility for.

10 **Q. On its face, it's telling the**
11 **Patent Office that you are the**
12 **correspondent and fee address of record,**
13 **right?**

14 MR. KAMINSKY: Objection to the
15 form of the question.

16 A. On the face it says change of
17 correspondence, address. It says it's a
18 patent. It clearly refers to the '160
19 Patent. I don't know what else to say
20 about that.

21 **Q. All right.**

22 But in looking at the change of
23 correspondence address form, it is
24 reflecting for the '160 Patent that you are
25 the person at Greenberg Traurig that is

Todd Sharrin

Page 144

1 T. Sharinn

2 Q. Exhibit 37 is an e-mail from I
3 think the disaster secretary --

4 A. No, no, that's a different
5 Adrienne. This one is from Bryan Cave.

6 Q. And she is the trademark
7 administrator IP docket manager at Bryan
8 Cave, to your knowledge?

9 A. That's what it says. I mean, I
10 don't remember.

11 Q. Do you recall whether she is that
12 person or not?

13 A. Only remember her name, but I
14 mean, I read what it says.

15 Q. Do you know why she is sending
16 this e-mail to you?

17 A. It sounded like they had gotten
18 some correspondence concerning the '160
19 Patent and I reached out to find out
20 whether or not we should be getting those
21 documents.

22 Q. And what was your response to
23 her?

24 A. I told her just to send it over
25 and that I would get it to the right

Todd Sharrin

Page 145

1 T. Sharinn

2 people.

3 Q. Now, what she says here is:

4 "Dear Todd, thank you for having
5 your secretary call me this morning to
6 confirm that you are still responsible for
7 U.S. Patent No. 6,066,160."

8 The 160, the patent, right?

9 A. Yes, sir, that's what it says.

10 Q. Did you understand at that time
11 in December of 2002 that you were in fact
12 responsible for the '160 Patent for
13 purposes of the Patent Office?

14 A. No, I did not.

15 Q. And it's your testimony that the
16 conversation you had with her was simply
17 get it to me and I'll get it to the right
18 people?

19 A. Yes.

20 MR. KAMINSKY: Objection to the
21 form of the question.

22 Q. He doesn't like me characterizing
23 your testimony.

24 A. It's okay. I mean, the reason I
25 would do something like this, so I would

Todd Sharrin

Page 146

1 T. Sharinn

2 understand, is she's a docketing clerk at
3 Bryan Cave, why would I want to go through
4 the trouble of explaining to her that I've
5 been relieved of my duties with regards to
6 this client when I could just as easily
7 just have the documents walked over to my
8 office and walk them over to Steve's?

9 It's just the relationship I had
10 with Steve. It wouldn't make any sense to
11 do that.

12 Q. Do you recall who the secretary
13 was that would have made the call to
14 Ms. Leven?

15 A. I would assume by the year it was
16 either Adrienne Ivan or Paula Specht. Am I
17 right?

18 Q. I don't know.

19 A. Oh, I thought this was a quiz.

20 Q. No. Trust me. There are just
21 some questions --

22 A. Well, you know, I saw your
23 colleague hand you a note. I thought
24 maybe --

25 Q. No, he wants to know who is the

Todd Sharrin

Page 149

1 T. Sharinn

2 these two forms?

3 A. Never seen them before today.

4 Q. You testified earlier that it was
5 standard practice to docket a patent that
6 you were responsible for during the time
7 that you were responsible, right?

8 A. I'm not sure if that's exactly
9 what I said, but --

10 Q. I'm pretty sure it wasn't exactly
11 what you said.

12 A. What's standard, and I think it
13 would be true of any reputable IP practice
14 is it's standard to, you know, enter dates
15 that are important with ticklers in the age
16 of computers that would pop up and let you
17 know when things are due. This looks like
18 a printout this would have shown something
19 along those lines.

20 Q. It's fair to say that most IP
21 practices have an IP docketing system in
22 place?

23 A. As far as I know.

24 Q. And it's an electronic one
25 typically nowadays?

Todd Sharrin

Page 153

1 T. Sharinn

2 Q. Revoked and then it has the date
3 of 4/2/2003, right?

4 A. I see that, yes, sir.

5 Q. Do I understand, though, that
6 your testimony is that you ceased having
7 responsibility for the '160 Patent as of
8 the date that you received the phone call
9 on October of 2002 from Steve following the
10 Markman Hearing?

11 A. That would have been my
12 understanding, yes, sir.

13 Q. And it didn't take any revocation
14 of any Power of Attorney for you to have
15 that understanding?

16 A. They made it very clear on the
17 telephone conversations that we had that I
18 was to do no more work and bill no more
19 time.

20 Q. So the revocation of a Power of
21 Attorney would have been a formality in
22 your, to your understanding?

23 MR. KAMINSKY: Objection to form
24 of the question.

25 A. I guess that would be a fair

Todd Sharrin

Page 161

1 T. Sharinn

2 A. Probably, yeah.

3 Q. Do you recall whether Steve
4 Colvin was considering other counsel
5 besides Greenberg Traurig for the Medtronic
6 litigation?

7 A. I think he was.

8 Q. Do you recall that he was
9 considering Mark Evens at that time as a
10 potential alternative?

11 A. I think he was.

12 Q. Do you recall that it was the
13 thought or effort of Greenberg Traurig to
14 persuade Steve to come to Greenberg Traurig
15 with that litigation in part by including
16 Paul Sutton as one of the attorneys who
17 would be working on that matter
18 specifically?

19 A. No, that's not why Paul was
20 brought in.

21 Q. Why was Paul brought in?

22 A. Because I didn't feel comfortable
23 taking on a case of this magnitude without
24 senior supervision.

25 Q. Did you have any sense that Steve

Todd Sharrin

Page 162

1 T. Sharinn

2 Colvin wasn't comfortable with you handling
3 it on your own without somebody like Paul
4 Sutton?

5 A. Quite the contrary.

6 Q. Can you elaborate on that? Was
7 there anything specific that gave you that
8 sense that he was not concerned about that?

9 A. Yeah. Steve, if I remember
10 correctly, had mentioned Mark Evens to me
11 because I think at that time he was pending
12 nuptials, I'm not sure if he was actually
13 married at that point, and actually put
14 Mark on the phone, and the way Steve always
15 does things, I think he tried to make a
16 match between GT and Mark to bring him
17 almost in to do it.

18 I think Mark may have raised
19 concerns that I wasn't gray enough at the
20 time to handle it, but if I remember
21 correctly, Steve had told me he wasn't too
22 worried about it and, you know, he knew
23 this was, for lack of a better term, our
24 baby.

25 We had worked on this from the

Todd Sharrin

Page 167

1 T. Sharinn

2 compensation purposes.

3 There are much better ways to go
4 about what he was hoping to do than to
5 initiate a litigation -- I shouldn't say
6 better ways, safer ways, less expensive
7 ways than patent infringement litigation,
8 if that makes sense.

9 Q. If the re-examination of the
10 patent essentially resulted in the adoption
11 of the claim construction by Judge Lynch,
12 would you consider that to be a good
13 result?

14 A. Say that one more time? I'm
15 trying to even read it and it didn't come
16 out quite that clear.

17 Q. Let's back up.

18 You had the Markman Hearing, the
19 Markman decision came out with a claim
20 construction for purposes of the patent,
21 right?

22 A. Yes, sir.

23 Q. And that was a good construction
24 for Quickie's purposes?

25 A. It was better than good.

Todd Sharrin

Page 185

1 T. Sharinn

2 Q. And that Thelen Reid will be
3 substituted in for Greenberg Traurig for
4 purposes of the litigation?

5 A. Do you mind if I read this?

6 Q. Oh, please.

7 A. It says that, yes, sir.

8 Q. And in the third paragraph, it
9 states you and Greenberg Traurig will
10 continue to handle various patent

11 application pending on behalf of Quickie,
12 LLC and Quickie Vision, LLC, right?

13 A. Yes, sir.

14 Q. And that was your understanding,
15 that you would continue on behalf of
16 Quickie after the substitution of counsel
17 with regards to the litigation?

18 MR. KAMINSKY: Objection to the
19 form of the question.

20 A. No, sir.

21 Q. You take issue with the statement
22 made here?

23 A. My understanding was that I was
24 to transfer all Quickie matters. So when I
25 see, and the first time I had ever looked

Todd Sharrin

Page 186

1 T. Sharinn

2 at this letter in any real meaningful way
3 would have been when I met with counsel the
4 other day -- and when I saw the Quickie
5 LLC -- I think the Quickie Vision makes
6 perfect sense, and if it had said S&A
7 Rings, that would make perfect sense.

8 I suspect that was a typo by
9 Mr. Fell -- there would be no reason for me
10 to continue prosecuting patents on behalf
11 of Quickie because I don't think Quickie
12 had any pending patents.

13 And so if I had even noticed that
14 when the letter was sent to me, I would not
15 have said anything about it only because
16 what was the point?

17 Q. It's kind of, you know -- it's
18 just, again, talking about taking the high
19 road, it just didn't make a difference, and
20 just so we're clear, I don't want to get
21 into any great detail, as far as you were
22 concerned, as of this date for sure and
23 before this date in terms of the call that
24 was made to you, any and all activity on
25 behalf of you or Greenberg Traurig with

Todd Sharrin

Page 187

1 T. Sharinn

2 regards to the '160 Patent was done, over,
3 finite?

4 A. By the date of this letter, that
5 was my understanding, yes, sir.

6 Q. And so any subsequent actions
7 with regards to the re-examination or the
8 transfer of powers of attorney or
9 revocation of Power of Attorney was
10 essentially noise and of no real
11 consequence in your mind?

12 A. I think that noise is a good way
13 to describe. I wouldn't say there was no
14 consequence. In my mind and in my heart at
15 that time there was a hope to get back in
16 the game. So if they called me, I was very
17 clear to make sure they understood I wasn't
18 going to do work without being compensated,
19 particularly on this matter.

20 I mean, there was no, how do I
21 put this -- there was a very open
22 relationship between us. On other matters,
23 they wanted to bounce something off me and
24 say, hey, do you think this is patentable,
25 I had asked to set up a new matter.

Todd Sharrin

Page 188

1 T. Sharinn

2 But with this one, because of
3 what had occurred, there is no way I would
4 have engaged in any real meaningful
5 conversation without them having engaged me
6 to do it, because my understanding was that
7 my powers of attorney and my involvement in
8 this case were fully revoked. And when I
9 say this case, I don't just mean the
10 litigation, I mean the 160's existence.

11 Q. So that begs the question,
12 Mr. Sharinn, as to how did you ensure that
13 that was full legal communicated to your
14 client, former client, however you want to
15 describe it, Quickie, LLC that you were
16 done, over, finite, had no further
17 responsibility with regards to that patent
18 in any way, shape or form?

19 MR. KAMINSKY: I'm just going to
20 object to the very beginning of that
21 question. I don't object to the
22 question part of it, but the phrase
23 "so that begs the question" I do
24 object to.

25 You can answer the question that

Todd Sharrin

Page 189

1 T. Sharinn

2 follows that, which is how did you

3 communicate this to your client.

4 THE WITNESS: Okay.

5 MR. SCOTT: And I'm withdraw the
6 prelude.

7 A. That's fine. Just to answer your
8 question, I didn't feel like I needed to
9 communicate that fact. They had made this
10 abundantly clear to me that that was their
11 intention and that was their desire.

12 But if for purposes of, as I used
13 the term weenie before, famous Latin term,
14 I was a weenie, too, and I was not going to
15 do work on this, and I made it clear to
16 them you fired me, you have new counsel,
17 your new counsel is Thelen Reid & Priest,
18 you need to take this up with Mark Evens or
19 we can be reengage the and then we can deal
20 with this.

21 So if that's not communication
22 enough, then I'm guilty.

23 Q. That communication was oral
24 though, that you've just referred to?

25 A. As far as I can recall. I mean,

Todd Sharrin

Page 190

1 T. Sharinn

2 I might have sent an e-mail, I don't know.
3 It wouldn't be beyond me to have sent an
4 e-mail or to respond to an e-mail. I mean,
5 Steve didn't e-mail. Gene e-mailed at
6 times.

7 I know Gene was very upset about
8 this, Gene Grassi, or at least that's the
9 impression I got. Alan, very rarely he
10 e-mailed. He was a big fax guy. But I
11 would have e-mailed Alan from time to time,
12 I would think. I certainly sent him a
13 fax -- I don't know.

14 Q. You certainly would have sent him
15 a fax essentially stating what you just
16 described for the record?

17 A. If I were going to write
18 something. I'm not sure at the time it
19 called for that. It seemed pretty clear
20 that they did not want me to do anything on
21 this. Every time I pushed back and I said
22 I'm not going to do this without being
23 engaged to do it, then they stopped and we
24 went on to something else.

25 Q. All right. I just haven't

Todd Sharrin

Page 191

1 T. Sharinn

2 seen --

3 A. No, I'm just saying it's not like
4 they said to me, okay, Todd, engage. At
5 one point they did say that and if I'm not
6 mistaken it filled out, you know, I opened
7 up a matter and then nothing ever really
8 came of it because it was just a minimal
9 amount of work and it was just asking me my
10 opinion on the document.

11 Q. Let me just make sure, though,
12 that the record is there that you don't
13 have any records of your own that haven't
14 already been produced, that's right, right?

15 A. Well, I think the question you're
16 asking right now is better asked of
17 Greenberg Traurig. I don't have any
18 records that pertain to this or any other
19 matters while I was at Greenberg Traurig
20 concerning the Colvin group.

21 Q. I just haven't seen anything in
22 writing along the lines you described. I
23 just want to make sure that it's not out
24 there and I just haven't gotten it.

25 A. Don't know. I don't know if it

Todd Sharrin

Page 194

1 T. Sharinn

2 even think of it that way. I would just
3 think of it as we're referring to Steve
4 Colvin, et al.

5 Q. Just so we're clear, did you not
6 consider Quickie to be your client any
7 longer as of October 15, 2002?

8 A. It's a long time ago, but yeah,
9 that's my recollection.

10 Q. That's your testimony?

11 A. Well, it's my testimony because
12 it's on the transcript, but yes, that's my
13 recollection.

14 Q. And so to the extent that Paul
15 understood that that was not, that was not
16 an understanding that you shared with them?

17 A. Say that again.

18 Q. To the extent that Paul
19 understood that Quickie was still a client
20 of the firm Greenberg Traurig, that was not
21 an understanding that you shared with him?

22 MR. KAMINSKY: Objection to the
23 form of the question.

24 A. I don't know what Paul thought,
25 and I never discussed it with Paul, to my

Todd Sharrin

Page 198

1 **T. Sharinn**

2 **the client matter number which pertained to**
3 **that litigation and that litigation alone,**
4 **right?**

5 A. That's what he was asked to send
6 over, I'm assuming, but I also see number 5
7 on your list items now that I'm looking at
8 it more closely, and number 4, which would
9 have had all to do with prosecution and
10 nothing to do with litigation.

11 **Q. Well, but the prosecution file**
12 **does relate to the litigation?**

13 A. I don't want to debate this with
14 you. You asked me a question and I'm
15 giving you a full answer.

16 **Q. If you disagree with me --**

17 A. I disagree with you.

18 **Q. Let's back up.**

19 A. No, I'll answer your question
20 very succinctly.

21 There would be no reason to send
22 item number 5 in particular unless we were
23 transferring the prosecution files,
24 otherwise we wouldn't have them. You asked
25 us for the 160 file history and prior art.

Todd Sharrin

Page 199

1 T. Sharinn

2 That's exactly what it is. That's the file
3 wrapper.

4 Q. Have you ever undertaken a patent
5 litigation without getting the file
6 wrapper?

7 A. Of course not, but that would be
8 our file right there, that's what we're
9 sending them.

10 Q. You must look at in connection
11 with any enforcement litigation, is it not?

12 A. Not when it's your personal file,
13 you could get that from the PTO if you're
14 defending or prosecuting depending upon
15 where you fall in the V, but in this
16 particular instance, it makes perfect sense
17 to me that that's what was being sent over
18 there. Paul didn't even know it himself.
19 I'm sorry. I mean, you're asking me a
20 question, I'm giving you an answer.

21 Q. And all I want to make clear, and
22 if you disagree, you disagree, that for
23 purposes of a litigation it would be
24 appropriate to send over the file wrapper
25 and the prosecution file so that those

Todd Sharrin

Page 200

1 **T. Sharinn**

2 **matters are available to successor counsel?**

3 **MR. KAMINSKY:** Objection to the
4 form of the question.

5 **BY MR. SCOTT:**

6 **Q.** That would be standard practice,
7 would it not?

8 **MR. KAMINSKY:** Objection to the
9 form of the question.

10 **A.** It would be, but they would have
11 been covered under number 13, and they
12 would have been covered under number 12 and
13 they would have been covered under number
14 16 and they would have been covered under
15 number 17. There would be no reason to
16 make a separate point of putting that in
17 there.

18 **Q.** The file wrapper is not something
19 separate and apart from documents produced
20 by Quickie and documents produced by
21 Medtronic?

22 **A.** It is something separate and
23 apart, because the documents, as part of
24 the production, would have been the file
25 wrapper that was not attorney-client

Todd Sharrin

Page 201

1 T. Sharinn

2 privilege.

3 Q. The file wrapper would include
4 discovery?

5 A. The file -- let's understand
6 something. In the file wrapper, there's 3
7 folds in it. There is the center fold,
8 which has the correspondence from the PTO
9 and to the PTO on the right side in my
10 files, at least there is correspondence
11 between the client and yourself.

12 On the left side there is prior
13 art and other underlying information that
14 was required in either the drafting of the
15 prosecution of the actual patent. Some of
16 that stuff is discoverable or producible
17 and some of it is not.

18 If you're making a production of
19 all of this stuff here for purposes of a
20 litigation, you would produce all of this.

21 If you're producing, if you're
22 sending over all your documents that relate
23 to that client in a patent litigation, and
24 if you were the one who had ultimately
25 prosecuted that matter, you'd be sending

Todd Sharrin

Page 202

1 T. Sharinn

2 over, you know, if you're sending over the
3 prosecution materials you're sending over
4 the prosecution materials.

5 There would be no reason to set
6 up a separate category because all the
7 relevant documents would be under 13 for
8 the litigation. These other documents
9 would include documents that wouldn't have
10 been produced under 13 and you're sending
11 that over because they need to be able to
12 mount it or the application, they're taking
13 responsibility for this, like you asked me
14 when I read this do I see --

15 Q. That's all I can do is ask you
16 what you understand this to be.

17 A. That's my understanding when I
18 look at it today. What my understanding
19 was on October 16, 2002, I don't even know
20 where I was on October 16, 2002. I'm sure
21 I was somewhere outside of Paul Jergensen's
22 office, but who knows.

23 Q. You are not transferring the
24 files with regards to any re-examination
25 proceedings at that point in time, were

Todd Sharrin

Page 203

1 **T. Sharinn**

2 **you?**

3 A. I don't think there were any at
4 that point, were there? We wouldn't
5 transfer files for that because we weren't
6 handling that. We're not the attorneys of
7 record for the re-examination as far as I
8 know. I don't recall ever being that. I
9 may be wrong again.

10 (Exhibit 39, Letter, marked for
11 identification, as of this date.)

12 **Q. Would you identify that for the**
13 **record, please?**

14 A. It's a letter to Steve Colvin
15 dated January 29, 2003 and since we're
16 making a big thing about who the letter is
17 to, it's not to Quickie, LLC, it's not to
18 any of the ring companies like S&A, not to
19 Quickie Endoscope.

20 It's to Stephen Colvin at his
21 office at NYU and it's regarding a nonslip
22 surgical inside straight.

23 **Q. Which happens to bear the Quickie**
24 **client number, does it not, 51822?**

25 A. Yes, sir, that's what I've been

Todd Sharrin

Page 204

1 T. Sharinn

2 told today.

3 Q. And the 0108 is one of the
4 Quickie intake matters that we looked at
5 previously, right?

6 A. Right, but we also discussed that
7 it was very possible that it was put into
8 the wrong group.

9 Q. But for the client, you're
10 referring to it as a Quickie matter by way
11 of the Greenberg Traurig billing entry,
12 right?

13 MR. KAMINSKY: Objection to the
14 form of the question.

15 MR. SCOTT: Yeah, that's a bad
16 question.

17 BY MR. SCOTT:

18 Q. For the client's purposes in
19 receiving this letter, he is seeing your
20 reference which is the Quickie client
21 matter --

22 A. Okay, let me answer this, if
23 Steve were alive today and you said to
24 Steve, Steve does the number 51822 have any
25 significance to you, Steve wouldn't be able

Todd Sharrin

Page 205

1 T. Sharinn

2 to tell you, and I can tell you undoubtedly

3 I'll testify anywhere to that --

4 Q. I beg to differ, it would matter
5 to him today.

6 A. Well, only if you coached him
7 enough to remember that and he actually
8 listened to you and paid attention to you
9 and then chose to say it.

10 And I will notice another thing,
11 it says dictated but not read in bold
12 italics at the bottom. So I wouldn't have
13 even known whether or not this was the
14 right number on it and I notice that my
15 former assistant Adrienne Ivan is the one
16 who signed this.

17 Q. Who you don't want to vouch for?

18 A. I wouldn't vouch for Adrienne on
19 her own birthday.

20 Q. What success are you referring to
21 here, if you can recall?

22 A. I honestly don't know. So it
23 sounds to me like this may have been one of
24 the days where Steve liked Thelen Reid and
25 had something positive to say about them,

Todd Sharrin

Page 206

1 T. Sharinn

2 and so, again, I told you, I tried to
3 always take the high road on things, I
4 congratulated him on it. I don't know what
5 else you'd say to somebody under those
6 circumstances.

7 (Exhibit 40, Letter, marked for
8 identification, as of this date.)

9 Q. Let's look at what's been marked
10 as Exhibit 40 to your deposition. If you
11 could identify that?

12 A. This is another letter just to
13 Steve Colvin, not to Quickie or S&A Rings
14 or anybody else, talking about the
15 concentric passive knotless suture
16 terminator. This one was not dictated, but
17 not read. So apparently I did sign and
18 read this one.

19 Q. And that also bears a Quickie
20 client and matter number, correct?

21 A. This is what I'm told.

22 Q. Well, it's not only what you're
23 told --

24 A. I think I've also testified --
25 no, no, we've been over this several times.

Todd Sharrin

Page 207

1 T. Sharinn

2 It's not going to change, you may like it
3 to, but it won't --

4 Q. Let me just finish the question.

5 A. Sorry.

6 Q. -- that the 51822 is the client
7 matter number at Greenberg Traurig for
8 Quickie, LLC, right?

9 A. Absolutely. Don't know that
10 that's the correct assignment of the
11 matter, though, and so I'm going to tell
12 you right now, you can ask me this, you
13 know, for as long as you'd like, I have no
14 idea whether this was or was not a Quickie
15 matter. I would tend to doubt it was.

16 (Exhibit 41, Letter, marked for
17 identification, as of this date.)

18 Q. Let me hand you what's marked as
19 Exhibit 41 to your deposition.

20 Could you identify that for the
21 record, please?

22 A. Looks like I did pretty good
23 here. It's a letter to Dr. Colvin again,
24 not to Quickie or anybody else, and I'm
25 sorry to make a joke of this, but I mean,

Todd Sharrin

Page 208

1 T. Sharinn

2 it is clearly just a letter to him and it
3 talks about again the concentric passive
4 knotless suture. In this case, we're
5 advising them that the patent has been
6 issued. I guess I got him more patents
7 than I thought I did.

8 Q. What is the date of that letter,
9 please?

10 A. 2003, December 2nd.

11 Q. Understand all the
12 qualifications, it likewise bears a Quickie
13 client matter number, correct?

14 A. Yes, sir.

15 Q. Let me go ahead and ask you to
16 look at what is Exhibit 26 previously
17 marked in Mr. Sutton's deposition?

18 A. Just so you understand, what is
19 being shown here -- may I show you
20 something because maybe you'd like to see
21 it.

22 This letter that was, I guess,
23 marked Exhibit 44 to Alan Fell is to S&A
24 Rings, again with the reference number that
25 you're saying is for Quickie.

Todd Sharrin

Page 209

1 T. Sharinn

2 Q. Right.

3 A. Okay. So that's what I'm saying,
4 that these get confused a lot and that
5 people just use the same number. It's not
6 unlikely for Ms. Ivan to have just cut and
7 paste a new body into an old letter.

8 Q. Make no mistake, and I'm not
9 trying to play games, it's very clear that
10 there was, I don't want to call it a
11 Chinese menu, but it borders on somewhat
12 indiscriminate use of billing numbers.

13 A. I don't disagree at all.

14 MR. KAMINSKY: And names. So
15 long as we agree on that, we can save
16 ourselves a lot of questions.

17 I think all Mr. Sharinn has been
18 trying to say to you is that we used
19 the name Quickie as a shorthand but
20 that some of these things were
21 actually for S&A Rings rather than the
22 Quickie entity or vice versa, but
23 internally we just referred to that as
24 a Quickie matter.

25 Is that right.

Todd Sharrin

Page 210

1 T. Sharinn

2 THE WITNESS: That's correct.

3 And hours ago I had said that the
4 concentric passive knotless would not
5 in my recollection have fallen into
6 the Quickie domain, it would have
7 fallen into S&A Rings, and lo and
8 behold, Exhibit 44 I guess from
9 Mr. Sutton's deposition would bear out
10 that fact.

11 MR. KAMINSKY: And if you go back
12 and you look as you showed before in
13 the exhibits, when you have the intake
14 memo from this concentric passive
15 knotless suture terminator, it says
16 address Quickie. We all know that
17 that particular device was one for S&A
18 Rings as shown by this letter to
19 Mr. Fell.

20 Correct, Mr. Sharinn.

21 THE WITNESS: Yes, sir.

22 BY MR. SCOTT:

23 Q. And I'm not disputing that there
24 was a somewhat haphazard use of some of the
25 number for some of the claim matter numbers

Todd Sharrin

Page 211

1 T. Sharinn
2 and the various entities within the Colvin
3 group.

4 What I am trying to show again,
5 just to put it out there, is that there
6 were also times when you knew what you were
7 using it for and you used it consistently,
8 whether it was for the litigation in the
9 0104 or for the re-examination in the 0109
10 or with regards to the 0107 matter.

11 MR. KAMINSKY: I think the
12 witness has been trying to tell you
13 that it wasn't used consistently and
14 that he didn't pay attention to those
15 references.

16 Is that correct, Mr. Sharinn.

17 THE WITNESS: Yes, sir.

18 MR. SCOTT: I understand the
19 testimony.

20 A. Do you want me to talk to Number
21 26, Exhibit 26?

22 Q. Yes, that's where we are, thank
23 you for bringing me back to the question.

24 A. My pleasure, glad to help.

25 Q. This is a letter dated March 11,

Todd Sharrin

Page 230

1 T. Sharinn

2 EXAMINATION BY

3 MR. KAMINSKY:

4 Q. Mr. Sharinn, your communications
5 in this matter included frequent
6 communications -- strike that.

7 Your communications in connection
8 with your representation of the Colvin
9 clients included communications with
10 Mr. Fell, is that right?

11 A. It did.

12 Q. What did you understand his
13 position to be?

14 A. He acted in the role of general
15 counsel.

16 Q. And did you speak with him
17 frequently about the Colvin matters?

18 A. I spoke to him frequently, and
19 Colvin was among things that we had spoken
20 about.

21 Q. Now, you saw in the client intake
22 matters that the address of the client was
23 given Quickie, care of Mr. Fell and his law
24 firm, is that right?

25 Do you want to go back and --

Todd Sharrin

Page 231

1 **T. Sharinn**

2 A. No, no, I was just thinking about
3 your question. Yes, that's correct.

4 Q. And the billings went to
5 Mr. Fell, in other words, the billings for
6 these matters were sent to Mr. Fell, is
7 that right?

8 A. Yes, sir.

9 Q. And were you --

10 A. I think there may have one or two
11 occasions where they weren't sent to Mr.
12 Fell. They were actually sent to Steve
13 Colvin, and I think that may have been a
14 time when Steven and Alan may have had a
15 little bit of a falling out.

16 Q. But, for example, if you look at
17 Exhibit 43, you know, that he was shown by
18 Quickie's counsel, the cover letter goes to
19 Alan Fell, Quickie, LLC, care of Rick
20 Steiner -- that's Mr. Fell's law firm,
21 correct?

22 A. It is, but that's not my
23 signature.

24 Q. Exhibit 42, same thing?

25 A. Yes.

Todd Sharrin

Page 232

1 T. Sharinn

2 Q. That's the address, correct?

3 A. Correct.

4 Q. Were you relying on Mr. Fell to
5 sort out which particular Colvin or Quickie
6 or Quickie or XYZ or S&L or whatever the
7 client was and to appropriately sign the
8 charge to appropriate client?

9 MR. SCOTT: Objection to form.
10 BY MR. KAMINSKY:

11 Q. Were you relying upon Mr. Fell to
12 determine by particular Colvin entity,
13 particular charges and bills applied to?

14 MR. SCOTT: Objection. Form.

15 A. May I answer?

16 Q. Yes.

17 A. Okay. From what I understand,
18 you're asking me did I wait for Mr. Fell to
19 figure out who should be paying me what,
20 and the answer is yes.

21 Mr. Fell and I established a
22 protocol regards to the Colvin matters that
23 it was just crazy to try and sort them out
24 separately. So he would read the bills and
25 if he had a question about it and a

Todd Sharrin

Page 233

1 T. Sharinn

2 reference he would ask me about it.

3 Q. And so you, yourself, didn't try
4 to figure out the specific relationship
5 between the Quickie entities or the Colvin
6 entities, is that right?

7 A. I did early on and then I gave up
8 and that was long before I ever got to
9 Greenberg Traurig.

10 Q. Now, sometimes you wrote to
11 Mr. Fell with a reference to a matter that
12 might relate to a company other than
13 Quickie and yet you addressed your letter
14 to him care of Quickie, is that right?

15 A. That did occur.

16 MR. SCOTT: Objection to form.
17 BY MR. KAMINSKY:

18 Q. And sometimes you wrote to
19 Mr. Fell about a matter that related to a
20 different Colvin entity and you wrote to
21 Mr. Fell care of his law firm, but
22 referenced that entity, isn't that right?

23 A. That's correct.

24 Q. For example, let me show you a
25 document which we're going to mark Exhibit

Todd Sharrin

Page 234

1 T. Sharinn

2 44 --

3 (Exhibit 44, Letter, marked for
4 identification, as of this date.)

5 Q. -- which is a letter from Todd
6 Sharinn to Alan Fell, S&A Rings, LLC,
7 December 2, 2003 and it has the Bates
8 number GT505 to 507.

9 Is that an example of a letter
10 that you wrote to Mr. Fell referring to a
11 matter that involved S&A Rings, LLC?

12 A. Yeah, I mean, in this letter it's
13 addressed to S&A Rings, LLC and this
14 concerns the passive knotless suture
15 terminator, and it does have what I've been
16 drilled into today to learn the Quickie
17 reference number.

18 Q. Now, this is the concentric
19 terminator, start?

20 A. Concentric passive knotless
21 suture terminator.

22 Q. And was that a matter for S&A
23 Rings or would it be Quickie?

24 A. No, it would be S&A Rings, I
25 would think. The real way to determine

Todd Sharrin

Page 235

1 T. Sharinn

2 that would be to look at the actual letters
3 patent and see who the assignee was.

4 Q. Do you remember there was a
5 Patent Number 745 that related to the
6 concentric terminator?

7 A. That would be an application
8 number, not a patent, but yes.

9 Q. Okay.

10 And that's different than the
11 '160 Patent, isn't it?

12 A. Again, one would be an
13 application, one would be a serial number
14 for the application, yeah, there would be
15 the actual letters patent and its
16 registration number, but yes, it's a
17 different number than what would have been
18 on the '160.

19 Q. Do you remember when you looked
20 at client intake form for this concentric
21 passive knotless suture terminator it was
22 stated the client address as Quickie?

23 A. I do.

24 Q. But yet this really was a matter
25 for S&A Rings, is that correct?

Todd Sharrin

Page 236

1 T. Sharinn

2 MR. SCOTT: Objection. Form.

3 A. That's correct.

4 Q. So this is an example of where
5 you used the references to Quickie as sort
6 of a shorthand for all of the Colvin
7 matters, is that a fair thing to say?

8 MR. SCOTT: Objection to the
9 form.

10 A. Yeah, if it means I was sloppy in
11 my billing, they be, I guess I was sloppy
12 in my billing.

13 Q. Did you use references to Quickie
14 as a shorthand to the various Colvin
15 matters?

16 A. I did.

17 MR. LODEN: Objection to form.

18 Q. Now I'm going to show you a
19 number of documents that we've marked, I'm
20 going to mark exhibits.

21 We're marking Exhibits 45, 46,
22 47, 48 and 49. Why don't I just identify
23 them for the record. Is that okay with
24 you, Skip?

25 MR. SCOTT: That's fine.

Todd Sharrin

Page 239

1 T. Sharinn

2 A. No.

3 Q. Do you remember you opened up a
4 new file in December of 2002 with a view to
5 possibly doing work on this matter, is that
6 right?

7 A. I don't have any independent
8 recollection of that.

9 Q. Let me show you Exhibit 19.

10 A. Yes, sir.

11 Q. And do you recall that Mr. Scott
12 showed you that document earlier and
13 pointed out that you had opened up a client
14 intake matter in December of 2002 after you
15 had already been replaced with respect to
16 the '160 Patent?

17 MR. SCOTT: Object to the form.

18 BY MR. KAMINSKY:

19 Q. Do you recall that?

20 A. Yes, sir.

21 Q. Looking at the first page of
22 Exhibit 45 --

23 A. Yes, sir.

24 Q. -- these are the time entries
25 that we found for this particular matter.

Todd Sharrin

Page 240

1 T. Sharinn

2 Do you see any entries that occur
3 after December 13, 2002?

4 A. No.

5 Q. So is it correct to say that
6 although you opened up a new client matter
7 in anticipation of doing work on this
8 matter, in fact you didn't bill Quickie for
9 work and become directly involved as
10 counsel in the re-examination after that?

11 MR. SCOTT: Object to the form.

12 A. That appears to be the case.

13 Q. Now, if you look at the second
14 page of that exhibit, it actually refers to
15 the passive knotless suture system.

16 Do you see that?

17 A. I do.

18 Q. And it has two entries on it in
19 March of 2003.

20 Do you see that?

21 A. I do.

22 Q. Can you tell us what work you
23 were doing at that time?

24 A. No.

25 Q. Do you see that the second entry

Todd Sharrin

Page 241

1 T. Sharinn

2 says telephone interview with examiner 0.4
3 hours.

4 Do you see that?

5 A. I do.

6 Q. Do you know what that involved?

7 A. No.

8 Q. Do you remember doing any work as
9 counsel for Quickie in connection with the
10 re-examination matter after December of
11 2002?

12 A. I don't have any specific
13 recollection.

14 Q. Do you remember that after March
15 of 2002 you received a notice from the
16 Patent Office that all authority that you
17 or Greenberg Traurig had had with respect
18 to the '160 Patent had been revoked?

19 MR. SCOTT: Object to the form.

20 MR. LODEN: Object to the form.

21 A. I don't recall the date of the
22 revocation.

23 MR. KAMINSKY: Let me show you a
24 document which we will mark Exhibit
25 50.

Todd Sharrin

Page 242

1 T. Sharinn

2 (Exhibit 50, Notice, marked for
3 identification, as of this date.)

4 Q. Is Exhibit 50 a copy of a notice
5 which you received?

6 A. I'm sorry?

7 Q. Is Exhibit 50 a copy of the
8 notice that you received from the Patent
9 Office?

10 A. It appears to be.

11 Q. Do you see that the notice is
12 dated April 2, 2003, do you see that?

13 A. It does.

14 Q. And as a patent lawyer, what do
15 you understand this notice to be telling
16 you?

17 A. That there is a new person in
18 charge of this file.

19 Q. Do you have any further authority
20 as to this matter after that?

21 MR. SCOTT: Object. Form.

22 A. No.

23 Q. Is that what you understood to be
24 the case?

25 A. I can't speak of what I

Todd Sharrin

Page 243

1 T. Sharinn

2 understood back then. It's what I
3 understand, as I sit here today.

4 Q. Let me show you a document which
5 has been previously marked Exhibit 27 in
6 this case.

7 Is that a letter that you wrote
8 to Quickie, care of Mr. Fell's law firm on
9 May 15, 2003?

10 A. It appears to be.

11 Q. And do you see that you write in
12 the first paragraph, "Enclosed for your
13 information and records are a copy of a
14 notice regarding change of Power of
15 Attorney filed in connection with the
16 above-referenced re-examination
17 application."

18 Do you see that?

19 A. Yes, sir.

20 Q. And attached to it as the
21 enclosure is a copy of Exhibit 50, is that
22 right?

23 A. Yes, sir.

24 Q. So you sent a copy of this notice
25 to Quickie, is that right?

Todd Sharrin

Page 244

1 T. Sharinn

2 A. I did.

3 Q. And then you continue on and say
4 well, we are surprised to have received
5 this document in view of the conversation I
6 had with Dr. Colvin, we respect his
7 decision and take no further action on this
8 matter.

9 Do you see that?

10 A. I do.

11 Q. What were you saying to Quickie?

12 MR. SCOTT: Objection to form.

13 A. What was I what?

14 Q. What were you trying to say to
15 Quickie?

16 A. I don't know if it could be
17 anymore clearer than that, I will take no
18 further action on this matter.

19 MR. SCOTT: My objection is to
20 the repeat of the same question.

21 BY MR. KAMINSKY:

22 Q. Did Mr. Fell or Dr. Colvin or
23 anyone else from the Colvin entities or
24 Quickie call you up after that and say to
25 you, oh, no, wait a minute, Todd, we're

Todd Sharrin

Page 245

1 T. Sharinn

2 still looking to you or to Greenberg

3 Traurig to continue to work on '160 Patent?

4 A. No.

5 Q. They did call you at various
6 times, both before and after the fact about
7 the re-examination petition to discuss
8 things that were going on with the Thelen
9 firm, is that correct?

10 A. Yes, sir.

11 Q. What did you tell them about your
12 status vis-a-vis the '160 Patent in those
13 conversations?

14 A. I don't know that we ever really
15 talked about it in any great terms, but I'm
16 certain knowing myself and the way I would
17 conduct myself that I would have told them
18 I had been relieved of all duties for that
19 case.

20 Q. And is that what you understood
21 had happened?

22 A. That's what I wrote in the
23 letter, yes, sir.

24 Q. Now, when you say that case, what
25 are you referring to by the words "that

Todd Sharrin

Page 250

1 T. Sharinn

2 senior attorney because he's number one on
3 here.

4 Q. And the form involved references
5 the passive knotless suture terminator.

6 Do you see that?

7 A. Yes, sir.

8 Q. And that's the '160 Patent, is
9 that right?

10 A. Yes, it is.

11 Q. As noted by the patent number at
12 the top of the form?

13 A. Yes, sir. If this was directed
14 to only the re-examination, it would have
15 the re-examination serial number.

16 Q. But this was with respect to the
17 patent itself, is that right?

18 A. Yes, sir.

19 Q. Now, as an attorney who is
20 admitted to practice before the Patent
21 Office and experienced in these matters, is
22 the effect of this form to say that whoever
23 had a Power of Attorney before no longer
24 has any involvement here and now these new
25 attorneys listed below are the attorneys

Todd Sharrin

Page 251

1 **T. Sharinn**

2 **with respect to this patent?**

3 MR. SCOTT: Objection to form.

4 A. Yeah. I mean, you're really
5 asking me for my experience what this means
6 as opposed to being a witness in this case.

7 My opinion on this would be that
8 or my interpretation of this document as
9 I've always understood it and as someone
10 who has filed them with regards to others
11 means that those others are no longer
12 permitted to participate in the prosecution
13 or the maintenance of the referenced
14 patent.

15 MR. SCOTT: I'm going to object
16 and move to strike to the extent that
17 you're not designated as an expert.

18 THE WITNESS: I'm not, and I
19 don't want to be considered one.

20 BY MR. KAMINSKY:

21 Q. But you have experience before
22 the Patent Office, is that correct?

23 A. I've been doing this for a while.

24 Q. You fill this kind of form out
25 for clients of your own, is that right?

Todd Sharrin

Page 252

1 **T. Sharinn**

2 A. Never.

3 Q. Have you ever seen this kind of
4 form before?

5 A. I have and it's always been
6 filled out by a paralegal on my behalf.

7 Q. But in other words, you've
8 submitted them on behalf of your clients?

9 A. I've signed them.

10 Q. And your understanding from your
11 own personal knowledge and observation that
12 the purpose of this form is to replace one
13 attorney or set of attorneys with a new set
14 of attorneys?

15 A. It has two purposes. The first
16 purpose is to remove all powers from the
17 original or existing attorneys with power;
18 and second, in some cases could be a
19 designation of a new attorney. There is
20 another form similar to this that does not
21 designate other attorneys. It's a
22 substitute.

23 Q. But the one that we've marked
24 here did designate new attorneys, correct?

25 A. Yes, it does.

Todd Sharrin

Page 253

1 T. Sharinn

2 Q. Now, do you remember that you
3 were asked at a certain point to submit an
4 affidavit in support of an application by
5 Quickie petitioning for reinstatement of
6 the '160 Patent?

7 A. Yes. I will tell you what I
8 remember most.

9 Q. Please tell us what you remember
10 about the request that you submit that
11 declaration of affidavit of statement.

12 A. I remember submitting it.

13 Q. Did you submit a statement in
14 support of a petition?

15 A. I submitted a statement in
16 support of a petition.

17 Q. I'm going to show you a document
18 that we're going to deem marked Exhibit 52
19 and tomorrow we'll substitute a clean copy
20 of it.

21 MR. SCOTT: It's agreed.

22 A. Yes, sir.

23 (Exhibit 52, Statement, marked
24 for identification, as of this date.)

25 Q. It's a two-page statement.

Todd Sharrin

Page 254

1 T. Sharinn

2 Is that your signature at the end
3 of it?

4 A. Yes.

5 Q. And is that a copy of the
6 statement you submitted in November of 2006
7 in support of Quickie's petition?

8 A. May I look at it?

9 Q. Yes, please do.

10 A. Yes, this was a paper that I was
11 asked personally by Alan Fell, and I don't
12 recall, but possibly Steve Colvin to sign
13 and then I ended it a little bit, and yes,
14 I did sign this.

15 Q. Was it initially drafted by the
16 Maier & Maier firm as counsel for Quickie?

17 A. It had always been drafted by
18 them.

19 Q. And you reviewed it and made some
20 changes?

21 A. My own ones, yes, sir.

22 Q. And before you signed it, did you
23 have conversations with anyone at Maier &
24 Maier telling them that you were now
25 satisfied and were prepared to sign?

Todd Sharrin

Page 255

1 T. Sharinn

2 A. Yeah.

3 Q. Now, in paragraph number two --

4 A. They didn't tell me what it was
5 going to be used for specifically other
6 than they had mentioned to me that the
7 patent had been abandoned, which I was
8 surprised to hear.

9 Q. Was that the first that you
10 learned that the patent had been abandoned?

11 A. Yes, sir.

12 Q. Now, this is November 2006. You
13 write in paragraph 2:

14 "My responsibility, including the
15 payment of any maintenance fee that may
16 become due for the subject patent ended
17 prior to the date where the payment of a
18 first maintenance fee was due as evidenced
19 by the enclosed revocation of prior powers
20 of attorney signed on behalf of Quickie,
21 LLC on March 4, 2003 wherein all prior
22 powers of attorney previously given were
23 hereby revoked."

24 Do you see that?

25 A. I do.

Todd Sharrin

Page 256

1 T. Sharinn

2 Q. Does that refresh your
3 recollection that you had been shown that
4 revocation form sometime before you signed
5 this statement?

6 A. I must have been. I wouldn't
7 have signed it if I hadn't looked at it.

8 Q. And is the statement that I just
9 quoted from paragraph 2 true?

10 A. It is.

11 Q. Was it true then?

12 A. It's true always.

13 Q. Did anyone ever come to you
14 afterwards and say Todd, the statement you
15 submitted at our request on November 20,
16 2006 was actually wrong and we want you to
17 submit a different statement retracting
18 what you said in Exhibit 2?

19 A. No.

20 Q. Had anyone ever asked you to say
21 anything different to the Patent Office
22 than was said there?

23 A. No.

24 (Exhibit 53, Statement, marked
25 for identification, as of this date.)

Todd Sharrin

Page 257

1 T. Sharinn

2 Q. I'll show you a document which we
3 will mark, deem marked Exhibit 53, which is
4 a statement in support of petition by
5 Aubrey Galloway signed on either October
6 27, 2006 or on November 27, 2006. It's a
7 little hard to see what the date is.

8 A. It's October 27th.

9 Q. Have you ever seen his signature
10 before?

11 A. Sure.

12 Q. Does that appear to be his
13 signature?

14 A. Yes.

15 Q. Have you ever seen this document
16 before?

17 A. I may have. I don't recall
18 specifically. So you understand, I tried
19 my hardest not to be involved in any
20 further matters with the Colvin companies.
21 This is while I was at Baker McKenzie, and
22 I had very little interest in even doing
23 this.

24 Q. Now, Dr. Galloway says under oath
25 in paragraph 2:

Todd Sharrin

Page 258

1 T. Sharinn

2 "As the managing partner for
3 Quickie, LLC, I retained Robert E. Krebs,
4 et al. of Thelen Reid & Priest, LLP law
5 firm to transact all post-issuance
6 proceedings and responsibilities in the
7 Patent and Trademark Office including, but
8 not limited to, re-examination proceedings
9 and timely payment of the maintenance
10 fees."

11 Continuing in paragraph 3, he
12 says:

13 "As managing partner for Quickie,
14 LLC, I retained the law firm of Thelen Reid
15 & Priest to concurrently conduct litigation
16 services for Quickie, LLC."

17 Is that consistent with your
18 understanding of what had happened when you
19 were replaced by Thelen Reid & Priest in
20 the fall of 2002 or early 2003?

21 A. It is. It, in fact, underscores
22 another point that unfortunately, and
23 Mr. Scott had asked me earlier whether
24 Dr. Colvin expressed dissatisfaction with
25 the fact that Paul Sutton wasn't involved

Todd Sharrin

Page 259

1 T. Sharinn
2 in the case, and this actually reminds me
3 that, no, Steve Colvin did not.

4 But Aubrey who always seemed to
5 have a problem with everything did express
6 some concern about certain things, not with
7 the Paul Sutton thing, but that he had
8 expressed a favoritism towards Thelen Reid,
9 I remember that.

10 Q. Let me show you one other
11 document.

12 This is a supplement to the
13 petition in the Quickie reexamination
14 proceeding relating to the '160 Patent,
15 which we'll mark Exhibit 54.

16 A. Okay.

17 (Exhibit 54, Petition supplement,
18 marked for identification, as of this
19 date.)

20 Q. It is signed by Maier & Maier as
21 counsel for Quickie, dated December 1,
22 2006.

23 Have you seen this document
24 before?

25 A. I would need to look at it. I'm

Todd Sharrin

Page 260

1 T. Sharinn

2 not sure.

3 Q. Please do.

4 A. I don't believe I have seen this
5 before, no. I may have, and the only
6 reason I say may have is there was an
7 article written about me in IP360, which is
8 a Reg in the IP industry, IP meaning
9 intellectual property, and I got very upset
10 because I was never called by them to ask
11 what my opinion of all this was and that's
12 actually how I learned about the lawsuit in
13 the first place.

14 I had no idea about this until I
15 saw the article. And so I had a paralegal
16 pull off some materials from the PTO
17 website, and I may have looked at this
18 document when I had written them a nasty
19 e-mail saying that I expected a full
20 retraction of the statements that they
21 issued, which they ultimately did do. They
22 republished a new article.

23 Q. Do you see that in the third
24 paragraph of this petition -- I'm sorry,
25 supplement to petition, Quickie's counsel

Todd Sharrin

Page 261

1 T. Sharinn

2 writes:

3 "A declaration by Todd S.
4 Sharinn is being added as Exhibit 7 showing
5 that he was attorney at Pepe & Hazard, LLP
6 and was responsible for the '160 Patent.
7 Later, he left Pepe & Hazard, but continued
8 to be responsible for the '160 Patent as an
9 attorney at Greenberg Traurig (Exhibit 8).

10 "Further, his responsibility for
11 the '160 Patent ended prior to the time
12 when the payment of a first maintenance fee
13 was due (Exhibits 3 and 10) revocation of
14 prior powers of attorney signed on behalf
15 of the patent owner on March 4, 2003."

16 Do you see that?

17 A. I do.

18 Q. Is this statement that your
19 responsibility for the '160 Patent had
20 ended prior to the time the payment of the
21 first maintenance fee was due correct?

22 A. It is.

23 MR. SCOTT: Objection. Form.

24 BY MR. KAMINSKY:

25 Q. Did Mr. Maier ever call you up

Todd Sharrin

Page 262

1 T. Sharinn

2 after submitting this document to the PTO
3 and say, Todd, we submitted a document
4 stating that your responsibility for the
5 '160 Patent had ended prior to the time
6 that the first maintenance fee was due, we
7 were wrong about that, will you sign a new
8 statement and confirm that we were wrong?

9 A. No.

10 Q. Would you have signed such a
11 statement if he had asked you to do that?

12 A. If, in fact, I had messed up and
13 done that, yes. But I didn't and he
14 didn't.

15 Q. Based on your understanding
16 today, the statement that your
17 responsibility had ended before the
18 maintenance fee was due is correct, is that
19 right?

20 A. It is.

21 Q. Now, in the supplemental
22 petition, Quickie's counsel goes on to say
23 on page 2:

24 "Thelen Reid & Priest was granted
25 and held sole and full power in the '160

Todd Sharrin

Page 263

1 T. Sharinn
2 Patent from March 4, 2003 through August
3 14, 2006 (Exhibits 3, 9 and 10). This
4 period of time covered the time period up
5 until May 23, 2004 for timely paying the
6 first maintenance fee and then the entire
7 two-year time period starting from the date
8 of the '160 Patent's expiration to file a
9 remedial petition under the unintentional
10 provision (37 CFR 1.378(c)); this time
11 two-year expiration period ended on March
12 24, 2006."

13 Is it your understanding that
14 that is a correct statement of Thelen Reid
15 & Priest's responsibility and power?

16 MR. SCOTT: Objection. Form.
17 BY MR. KAMINSKY:

18 Q. Did anyone on behalf of Quickie
19 ever call you up after that and say we made
20 a mistake when we said that Thelen Reid &
21 Priest have the sole and full power with
22 respect to the maintenance fees and we need
23 to correct that?

24 A. No one called me up after that.
25 I had gotten calls in the past that said

Todd Sharrin

Page 264

1 T. Sharinn

2 they made a mistake with Thelen Reid &
3 Priest.

4 Q. When you say made a mistake with
5 Thelen Reid & Priest, were they referring
6 to the fact that they felt they made a
7 mistake in hiring Thelen Reid & Priest?

8 A. Yes, sir.

9 Q. Not in what they said to the PTO
10 about Thelen Reid & Priest's
11 responsibility, is that correct?

12 A. That's correct.

13 Q. Now, in an earlier question, the
14 transcript doesn't reflect an answer.

15 I read you a statement from this
16 petition about Thelen Reid & Priest ease
17 responsibility and power of responsibility
18 of the patent.

19 Is it your understanding that
20 that statement in the supplement to the
21 petition was correct?

22 A. Yes, sir.

23 Can we take a break for a minute?

24 (Recess taken from 2:49 p.m. to
25 2:55 p.m.)

Todd Sharrin

Page 266

1 T. Sharinn

2 than the concentric passive knotless suture
3 terminator, for convenience you've turned
4 to the last page of the last time entry, do
5 you see any time entries after March of
6 2003 which is the last month before you
7 received notice of the revocation of your
8 Power of Attorney in connection with the
9 '160 Patent?

10 A. No.

11 Q. And as we said before, as you
12 explained before, the concentric passive
13 knotless suture terminator relates to an
14 S&A patent, correct?

15 MR. SCOTT: Object to form.

16 A. Yes.

17 Q. Now, finally, you were shown
18 Exhibit 27, which is a letter from you to
19 Quickie, care of Rick Steiner, dated May
20 15, 2003, sending a copy of the notice of
21 the change of the Power of Attorney that
22 you had received.

23 Do you recall that?

24 A. Yes, sir.

25 Q. Did you bill Quickie for sending

Todd Sharrin

Page 267

1 T. Sharinn

2 them this letter?

3 A. I hope not.

4 Q. Do you remember ever having done
5 so?

6 A. I'm having trouble at this point
7 today remembering yesterday. No.

8 Q. And as you saw in the time
9 entries that we've marked, there is no time
10 entry for such a bill, is there?

11 A. That's correct.

12 Q. Because as far as you were
13 concerned, you were no longer an attorney
14 for Quickie in connection with the '160
15 Patent after the beginning of April at the
16 latest 2003, is that correct?

17 MR. LODEN: Objection to form.

18 MR. SCOTT: Objection to form.

19 A. That's correct. I mean, I don't
20 know how many different ways I can say it.

21 MR. KAMINSKY: No further
22 questions.

23 MR. SCOTT: Can I just see
24 Exhibit 27?

25 FURTHER EXAMINATION BY

EXHIBIT U

PEPER HAZARD LLP

LAW OFFICES

GOODWIN SQUARE
HARTFORD, CONNECTICUT 06103-4302
860/522-5175 FACSIMILE 860/522-2796

TODD S. SHARINN
*Only Admitted in PA & MA
Direct Dial: (860) 241-2831
tsharinn@pepehazard.com

May 30, 2000

282 9347 211

VIA FEDERAL EXPRESS

Stephen B. Colvin, M.D.
530 First Avenue - Suite 9 V
New York, NY 10016-0648

Re: U.S. Patent No.: 6,066,160 Issued: 5/23/2000
Serial No.: 09/198,087 Filed: 11/23/1998
For: Passive Knotless Suture Terminator For Use in Minimally
Invasive Surgery and to Facilities Standard Tissue Securing
Our Reference No.: 29620-1

Dear Dr. Colvin:

We take pleasure in forwarding to you for safekeeping the enclosed official United States Letters Patent, identified as follows:

Inventor(s): Stephen Colvin; Eugene Grossi, Allan Katz and Paul Oddo
Title: Passive Knotless Suture Terminator For Use in Minimally Invasive Surgery
and to Facilitate Standard Tissue Securing
Patent No.: 6,066,160
Expiration Date: November 23, 2018
(20 years from earliest claimed U.S. priority appln. no. — no renewal)
Issue Date: 5/23/2000 Assignee: Quickie LLC
Notice Requirement: All items manufactured under this patent should be marked "U.S. Patent No.
6,066,160." Failure to do so may result in loss of right to collect damages in
the event of patent infringement.
Application
Serial No.: 09/198,087 Filed: 11/23/1998

TSS/29620/1/469773v1
05/27/00-HRT/CMW

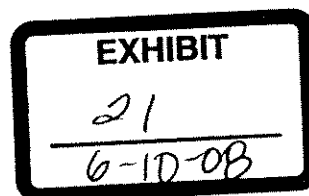
BOSTON

1841

HARTFORD

1841

SOUTHPORT



T000732

PEPPER HAZARD LLP

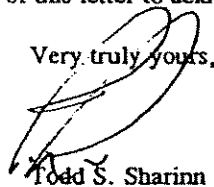
Stephen Colvin, M.D.
May 30, 2000
Page 2

Please note that the United States Patent and Trademark Office requires the payment of fees for maintaining patents issuing from patent applications filed in the United States on or after December 12, 1980. You have already qualified for the lower fees accorded small entities. The Patent and Trademark Office must be notified of any change in small entity status. The fees are due on or before 3 1/2, 7 1/2, and 11 1/2 years from the date the patent issues. Failure to pay the fees will result in loss of the patent. We will notify you regarding payment of the maintenance fees several months before they are due.

Please review the patent for any printing errors. If necessary, we will then request a Certificate of Correction, which will be forwarded to you for attachment to the patent.

Please sign and return the duplicate copy of this letter to acknowledge receipt of the patent.

Very truly yours,



Todd S. Sharinn

Enclosures

cc: Alan Fell, Esq. (w/photocopy of enclosure)

Receipt of the above-identified patent is acknowledge
this _____ day of _____, 2000.

Stephen B. Colvin, M.D.

EXHIBIT V

GREENBERG
TRAUBIG
ATTORNEYS AT LAW

Todd S. Sharinn
212-801-2155
sharinn@gtlaw.com

April 11, 2002

Mark F. Evens, Esq.
Thelen Reid & Priest LLP
701 Pennsylvania Avenue, N.W.
Suite 800
Washington, D.C. 20004-2608

Re: Medtronic/Guidant Litigation
Client-Matter No. 51822.010400

Dear Mark:

It was a pleasure speaking to you earlier today. I enclose a copy of the file wrapper for U.S. Patent No. 6,066,160 (the patent in issue for the above referenced matter).

If you have any questions or comments, please do not hesitate to contact me.

Very truly yours,


Todd S. Sharinn

TSS:pjs
Enclosures

EXHIBIT

5

6-10-08

GREENBERG TRAUBIG, LLP
885 THIRD AVENUE

NEW YORK, NEW YORK 10022-4834

212-801-2100 FAX 212-688-2449 www.gtlaw.com

NEW YORK MIAMI WASHINGTON, D.C. ATLANTA PHILADELPHIA TYSONS CORNER CHICAGO BOSTON PHOENIX WILMINGTON LOS ANGELES DENVER
SAO PAULO FORT LAUDERDALE BOCA RATON WEST PALM BEACH ORLANDO TALLAHASSEE

QLLC 0000028

Patent No. 6,066,160Granted 5-23-2000Applicant STEPHEN COLVIN, EUGENE GROSSI, ALLAN KATZ, PAUL O'DONSer. No. 09/198,087Group 3731Filed November 23, 1998

Room _____

For ^{PASSIVE} ~~MODEL~~ KNOTLESS SUTURE SYSTEM FOR USE IN MINALLY
INVASIVE SURGERY AND TO FACILITATE STANDARD TISSUE
SECURING TECHNIQUE

Drawings _____ Sheets. Executed _____

Forwarded _____

Allowed _____

Allowance Notice Sent _____

Final Fee Sent _____

Receipt for Final Fee _____

Patent Delivered to _____

Assignee QUICKIE LLC

Assignment Forwarded _____

Recorded _____

Reel _____

Frame _____

Assignment Returned _____

Delivered Assignee _____

Foreign _____

29620

QLLC 0000029

Applicant's Residence _____

Post Office Address _____

EXHIBIT W

RICK, STEINER, SEGAL, FELL & BENOWITZ, P.C.

ATTORNEYS AT LAW
THREE NEW YORK PLAZA
NEW YORK, N.Y. 10004
TELEPHONE (212) 422-0488
FAX (212) 422-0158

NEW JERSEY OFFICE
111 PATERSON AVENUE
HOBOKEN, N.J. 07030
(201) 798-8613

October 15, 2002

HAND DELIVERY

Todd Sharinn, Esq.
Greenberg Traurig, LLP
885 Third Avenue, Suite 2400
New York, NY 10022

RE: Quickie, LLC v. Medrtonic, Inc.
Civil Action No. 02 CV1157 (GEL)

Dear Todd:

This letter will confirm our recent conversation concerning the above referenced matter. I am writing this letter as general counsel to Quickie, LLC.

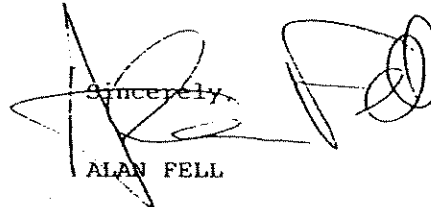
You are aware that the firm of Thelen, Reid, Priest will be substituted for Greenberg Traurig in the above referenced litigation. You will arrange to have the files prepared to be picked up by Thelen Reid Priest. If you would let me know when the files are ready and how many boxes are included, I will arrange to have them picked up.

You and Greenberg Traurig will continue to handle various patent applications pending on behalf of Quickie, LLC and Quickievision, LLC.

I am aware that there are pending bills outstanding from your firm. Quickie will be making a payment today on account and intends to pay the entire balance by the end of this year. I am hoping that your firm will waive its usual requirement and release the files immediately.

I want to personally thank you for the superb job you have done in litigating this matter. The result of the Markman hearing was excellent.

All the best.

Sincerely,

ALAN FELL

AF:ags

cc: Stephen B. Colvin, M.D.

CCFV

EXHIBIT

22

6-10-08

QLLC 0098946

EXHIBIT X

10/16/2002

16:43

GREENBERG TRAUBER + 776#51822#010400#2632246

NO. 954 P001



02 OCT 16 11:4:23

Transmittal Cover Sheet

TO

Name: Stephen B. Colvin, M.D.
Company:
Fax No.: (212) 263-2246
Phone No.:

Name: Mark Evens, Esq.
Company: Thelen Reid & Priest
Fax No.: (202) 508-4321
Phone No.:

Name: Alan Fell, Esq.
Company:
Fax No.: (212) 422-0158
Phone No.:

Name: Shari Markowitz-Savitt
Company: Thelen Reid & Priest
Fax No.: (212) 603-2001
Phone No.:

Name:
Company:
Fax No.:
Phone No.:

Name:
Company:
Fax No.:
Phone No.:

Name:
Company:
Fax No.:
Phone No.:

Name:
Company:
Fax No.:
Phone No.:

FROM Paul A. Jucrgensen

File Number 51822.010400

Comments

Date October 16, 2002

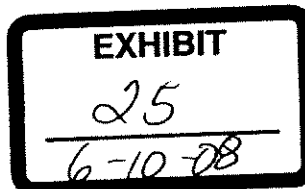
Time 3:47 PM

No. Pages Including this cover sheet 4

Please notify us immediately if not received properly at 212-801-2100.

The information contained in this transmission is attorney privileged and confidential. It is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone collect and return the original message to us at the address below via the U.S. Postal Service. We will reimburse you for your postage. Thank you.

885 Third Avenue, New York, New York 10022 (212) 801-2100 Fax (212) 688-2449



QLLC 0098947

10/16/2002

16:43

GREENBERG TRAURIG + 776#51822#010400#2632246

NO. 954 0002

GREENBERG
ATTORNEYS AT LAW
TRAURIG

Paul A. Juergensen
212-801-3173
juergenspa@gilaw.com

October 16, 2002

VIA FACSIMILE

Shari Markowitz-Savitt
Thelen Reid & Priest LLP
40 West 57th Street
New York, New York 10019

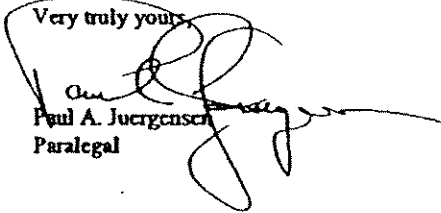
Re: Quickie, LLC v. Medtronic, Inc.
Our Reference No.: 51822.010400

Dear Shari :

Confirming our conversation this afternoon, our files concerning the above-referenced matter are ready to be picked-up by your office. A copy of my cover letter accompanying the files is faxed herewith.

We understand that you are unable to pick-up these documents today, and that you may be sending a representative from your office to pick the files up tomorrow, depending upon the weather. Mr. Sutton has instructed me to get these documents into the hands of Mark Evens "pronto", so that we ask that you not delay picking them up as soon as possible. Please contact me in advance so that I know when someone will be here to pick-up the files.

Very truly yours,


Paul A. Juergensen
Paralegal

Enclosures
(6 Boxes)

cc: Stephen B. Colvin, M.D.
Mark Evens, Esq.
Alan Fell, Esq.
Paul J. Sutton, Esq.
Todd S. Sharino, Esq.

GREENBERG TRAURIG, LLP
805 THIRD AVENUE
NEW YORK, NEW YORK 10022-4834

212.801-2100 Fax 212-488-2449 www.gilaw.com

ATLANTA BOCA RATON BOSTON CHICAGO DENVER FORT LAUDERDALE LOS ANGELES MIAMI NEW YORK ORLANDO PHILADELPHIA PHOENIX
TALLAHASSEE TYSONS CORNER WASHINGTON, D.C. WEST PALM BEACH WILMINGTON

QLLC 0098948

10/16/2002

16:43

GREENBERG/TRAURIG + 776H51822H010400H2632246

NO.954 0003

GREENBERG
ATTORNEYS AT LAW
TRAURIG

Paul A. Jorgensen
212-801-3173
jorgensa@gbtw.com

October 16, 2002

MESSENGER PICK-UP

Shari Markowitz-Savitt
Thelen Reid & Priest LLP
40 West 57th Street
New York, New York 10019

Re: Quickie, LLC v. Medtronic, Inc.
Our Reference No.: 51822.010400

Dear Shari :

We enclose Greenberg Traurig's files concerning the above-referenced matter. These files include the following document types:

1. Correspondence;
2. Pleadings;
3. Transcripts;
4. General/Main File;
5. U.S. Patent No. 6,066,160 File History & Prior Art;
6. Slides - Markman Hearing;
7. Key Cases & Definitions Re: Markman Hearing;
8. Prototype Photos;
9. Medtronic Device;
10. Allan Katz Prototypes;
11. Medtronic Prototypes;

GREENBERG TRAURIG, LLP

885 THIRD AVENUE

NEW YORK, NEW YORK 10022-4834

212-801-2100 FAX 212-688-2469 www.gbtlw.com

ATLANTA BOCA RATON BOSTON CHICAGO DENVER FORT LAUDERDALE LOS ANGELES MIAMI NEW YORK ORLANDO PHILADELPHIA PHOENIX
TALLAHASSEE TYSONS CORNER WASHINGTON, D.C. WEST PALM BEACH WILMINGTON

QLLC 0098949

10/16/2002 16:43 GREENBERG/TRAURIG + 776H51822H010400H2632246

NO. 954 0004

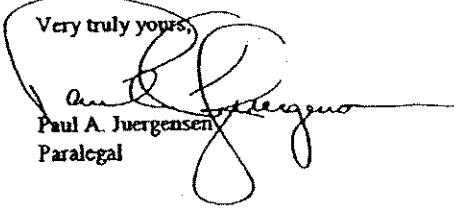
Shari Markowitz-Savitt
October 16, 2002
Page 2

12. Cases Re: Claim Construction;
13. Documents Produced by Quickie;
14. Documents Produced by Medtronic;
15. Attorney Work Files;
16. Patent Research/Searches; and
17. Original Documents from Quickie.

To the extent that we discover any additional materials, we will forward them immediately.

Please do not hesitate to call if you have any questions.

Very truly yours,


Paul A. Juergensen
Paralegal

Enclosures
(6 Boxes)

cc: Stephen B. Colvin, M.D.
Mark Evens, Esq.
Alan Fell, Esq.
Paul J. Sutton, Esq.
Todd S. Sharinn, Esq.

GREENBERG TRAURIG, LLP

QLLC 0098950

EXHIBIT Y

Levin, Adrienne

From: Levin, Adrienne
Sent: Monday, December 02, 2002 10:35 AM
To: 'sharinn@gtlaw.com'
Subject: US Patent No. 6,066,160 and reexamination requested

Dear Todd:

Thank you for having your secretary call me this morning to confirm that you are still responsible for US Patent No. 6,066,160. In that regard, I am forwarding to you by messenger the November 22, 2002 letter and enclosures from Daniel Latham, Esq., of Medtronic, Inc., in respect of the reexamination requested for the subject patent.

Best regards,
Adrienne Levin
Trademark Administrator/IP Docket Manager
Bryan Cave LLP-NY Office
alevin@bryancave.com
(212) 692-1927



EXHIBIT Z

✓

GREENBERG TRAURIG CLIENT/MATTER INTAKE MEMORANDUM

NOTE: Must obtain approval from Intake Committee Member or Department Head before any work is performed for this matter.

Please Check One: ☐ NEW CLIENT ☒ EXISTING CLIENT/NEW MATTER ONLY

Billable File?: ☒ Yes ☐ No Authored By: Sharinn, Todd S. / Ivan, Adrienne K.

I. CLIENT INFORMATION

December 3, 2002

<p>1. Client Number: 51822</p> <p>3. Address: Attn: Alan Fell, Esq. c/o Rick, Steiner, Segal & Fell Three New York Plaza New York, NY 10004</p>	<p>2. Client Name (Last, First): Quickie, LLC</p> <p>3a. Send Bill to attention of: Quickie, LLC c/o Rick, Steiner, Segal & Fell Three New York Plaza New York, NY 10004 Attn: Alan L. Fell, Esq.</p> <p>3b. Check if billing address should be marked "Personal and Confidential" <input type="checkbox"/></p>
<p>4. If a new client, describe how the Client was acquired and/or the referral source (Be specific or mark N/A): N/A</p>	
<p>5. Insure that all relevant parties have been added (If closely held or controlled, include list of Offices and Directors). See the last page for a printout from the system.</p>	

II. MATTER INFORMATION 51822-0109 Pending Matter Number: PM099889

<p>6. Matter Name [Required]: Reexamination of U.S. Patent No. 6,066,160 by Medtronic</p>
<p>7. Description of matter including amount & other material details [Required]. Must be sufficient detail so extent & significance of matter are clear: Amount: \$0.00; Matter Description:</p>
<p>8. Check if this representation requires registering under any applicable lobbying rules: <input type="checkbox"/> [If checked, please indicate applicable rules and person responsible for compliance]:</p>

III. BILLING INFORMATION

<p>9. File Attorneys:</p> <p>a) Billing Attorney → Sharinn, Todd S.</p> <p>b) Working Attorney → Sharinn, Todd S.</p> <p>c) Originating Attorney → Todd Sharinn</p> <p>10. Other Information:</p> <p>a) Telephone Number →</p> <p>b) Facsimile Number →</p> <p>11. Invoices Prepared: <input checked="" type="checkbox"/> Monthly <input type="checkbox"/> Quarterly <input type="checkbox"/> Other If "Other," Matter will be coded as "Delay." Please describe:</p> <p>Expected 1st Bill Date:</p> <p>Expected 1st Payment Date:</p> <p>13. Office Information:</p> <p>a) Office → New York</p> <p>b) Assigned Department → Intellectual Property</p> <p>c) Type of Law → IP/License</p>	<p>RECORDS MGMT USE ONLY</p> <p style="text-align: center; transform: rotate(-90deg);">61AHLR & O, P.A. DEC - 5 PM 2:57</p> <p>12a. Special Billing Instructions:</p> <p>12b. Collection Department Follow Up: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No (Requires Finance Committee signature [see line 28])</p>
--	---

IV. RECORDS INFORMATION

14. Additional Folder Files for the matter:			
15. LABEL ONLY <input type="checkbox"/>	REGULAR BROWN <input type="checkbox"/>	EXPANDABLE <input type="checkbox"/>	BINDER BLACK <input type="checkbox"/>
SINDER RED <input type="checkbox"/>	PLEADING GREEN <input type="checkbox"/>	PLEADING RED <input type="checkbox"/>	USE DISCRETION <input type="checkbox"/>
16. Location of File ("Return This File To"): Sharinn, Todd S.			

EXHIBIT

19
6-10-08

GT 0000731

V. FEE ARRANGEMENT

17. Expected fees for this matter (must be estimated with particularity in each instance even if not formalized with client): \$ 0.00
18. Fee arrangement with client:
- A. (1) Standard Hourly Rate per Timekeeper: ☐ Yes
- (2) Success Fee or Business Contingency: ☐ Yes
- (3) Legal Contingency Fee: ☐ Yes
- * Legal Contingencies must be approved by the Contingency Committee
- (4) Discount or Premium: ☐ Yes
- (5) Fixed Fee: ☐ Yes
- (6) Equity: ☐ Yes
- *** If checked, see Item 20 below
- B. Check box if estimated collection percentage against "Rate 1" for Life of File is below 90%. If checked, this matter must be approved by Department Head, unless Client exempted. ☐
19. A. Is a representation agreement letter in place? ☐ Yes ☒ No B. Has a fee agreement letter been mailed? ☐ Yes ☒ No
- C. Is a reasonable retainer in place? ☐ Yes ☒ No If yes, please enter retainer amount: _____
- [Note: Except for currently exempt clients, all litigation & bankruptcy matters require reasonable retainers unless approved by Department Head]

20. Check box if the law firm or its investment fund has made or will make investment in this client or if the retention arrangement involves the taking of equity in the client in lieu of all or part of fees. ☐ If this box is checked, please also check the following boxes to confirm each of the following requirements:
- ☐ A written engagement letter exists, incorporating the required language for matters in which firm has equity interest.
- ☐ The necessary approval process for this type of equity interest has been followed and affirmatively completed.
- ☐ An e-mail has been sent to the appropriate parties per the instructions at <http://www.intranet.gtlaw.com/admin/fileopening/equity.htm>.

VI. CONFLICTS

Conflict search run on: _____

Run by: _____

21. I affirm that any potential legal conflicts have been resolved / waived * initial here: _____
- * All actual conflicts to be cleared or decided by CEO or General Counsel of firm before file is opened.
22. Describe any potential business conflicts and status of waiver (This field is to be entered by hand. If any text here, 25A cannot be "Yes"):
23. Describe any known business, personal and/or financial relationship between this client and the firm, or any of the firm's Attorneys or Employees, not otherwise expressly disclosed herein (any such relationship to be approved by CEO in every instance):

VII. AUTHORIZATION (This section to be filled out by hand)

24. Billing Attorney Signature (always required):

Sign: _____

Date: 12/3/02

25. A. Is client exempt from intake signature? ☐ Yes ☒ No B. Is Department Head approval needed per requirements above? ☐ Yes ☒ No
- (Applies only to collection percentage and, as to litigation and bankruptcy matters, retainers.)

26. Intake Committee Member Signature

(REQUIRED UNLESS CLIENT IS EXEMPT - MUST INCLUDE CLIENT AND RELATED PARTIES BILLING HISTORY REVIEW, TO BE ATTACHED BY BILLING ATTORNEY):

(An Intake member in one's own department must sign this memo absent extreme emergency. Except for minor matters, if the file being opened is in a substantive area outside of that Intake member's discipline, he/she should consult with the shareholder in the appropriate substantive area prior to signing.)

☒ Signature required

Sign: _____

Date: 12/4/02

27. Department Head Signature (Only required if (i) contingency or discount could result in less than 90% collection percentage, or (ii) est. collection percentage is less than 90%, including Pro Bono matters, OR (iii) a client is not exempt and there is no or insufficient retainer for litigation and bankruptcy matters)
- (Emergency measure only: In the event that Department Head approval is required and it is difficult or impossible to obtain such approval due to time urgencies and circumstances, this form should be sent to the Chairman of the Intake Committee for signature in lieu of Department Head.)

☐ Signature required

Sign: _____

Date: _____

28. Finance Committee Signature (Only required to keep administrative collection staff from contacting the client with regards to a past due invoice (see 12b).)

☐ Signature required

Sign: _____

Date: _____

12/06/2002

11:36

GREENBERG TREURIG → 518224010000413055790717

NO. 858 D003

V. FEE ARRANGEMENT

17. Expected fees for this matter (must be estimated with particularity in each instance even if not formalized with client) \$ 0.00

18. Fee arrangement with client.

- A. (1) Standard Hourly Rate per Timekeeper: ☐ Yes
- (2) Success Fee or Business Contingency: ☐ Yes
- (3) Legal Contingency Fee: ☐ Yes
- * Legal Contingencies must be approved by the Contingency Committee
- (4) Discount or Premium: ☐ Yes
- (5) Fixed Fee: ☐ Yes
- (6) Equity: ☐ Yes
- ** If checked, see Item 20 below

B. Check box if estimated collection percentage against "Rate 1" for Life of File is below 90%. If checked, this matter must be approved by Department Head, unless Client exempted.

☐

19. A. Is a representation agreement letter in place? ☐ Yes ☒ No B. Has a fee agreement letter been mailed? ☐ Yes ☒ No
- C. Is a reasonable retainer in place? ☐ Yes ☒ No If yes, please enter retainer amount: _____

(Note: Except for currently exempt clients, all litigation & bankruptcy matters require reasonable retainers unless approved by Department Head)

20. Check box if the law firm or its investment fund has made or will make investment in this client or if the retention arrangement involves the taking of equity in the client in lieu of all or part of fees. ☐ If this box is checked, please also check the following boxes to confirm each of the following requirements:

- ☐ A written engagement letter exists, incorporating the required language for matters in which firm has equity interest.
- ☐ The necessary approval process for this type of equity interest has been followed and affirmatively completed.
- ☐ An e-mail has been sent to the appropriate parties per the instructions at <http://www.mitchellpaw.com/admin/filingopening/equity.htm>.

VI. CONFLICTS

Conflict search run on: _____

21. I affirm that any potential legal conflicts have been resolved / waived *

Initial here: 

* All actual conflicts to be cleared or decided by CEO or General Counsel of firm before file is opened.

22. Describe any potential business conflicts and status of waiver (This field is to be entered by hand. If any text here, 25A cannot be "Yes").

23. Describe any known business, personal and/or financial relationship between this client and the firm, or any of the firm's Attorneys or Employees, not otherwise expressly disclosed herein (any such relationship to be approved by CEO in every instance):

VII. AUTHORIZATION (This section to be filled out by hand)

24. Billing Attorney Signature (always required)

Sign: _____

Date: _____

25. A. Is client exempt from intake signature? ☐ Yes ☒ No B. Is Department Head approval needed per requirements above? ☐ Yes ☒ No
- (Applies only to collection percentage and, as to litigation and bankruptcy matters, retainers.)

26. Intake Committee Member Signature

REQUIRED UNLESS CLIENT IS EXEMPT - MUST INCLUDE CLIENT AND RELATED PARTIES BILLING HISTORY REVIEW, TO BE ATTACHED BY BILLING ATTORNEY:

(An Intake member in one's own department must sign this memo absent extreme emergency. Except for minor matters, if the file being opened is in a substantive area outside of that Intake member's discipline, he/she should consult with the shareholder in the appropriate substantive area prior to signing.)

☒ Signature required

Sign: _____

Date: _____

27. Department Head Signature (Only required if (i) contingency or discount could result in less than 90% collection percentage, or (ii) est. collection percentage is less than 90%, including Pro Bono matters. OR (iii) a client is not exempt and there is no or insufficient retainer for litigation and bankruptcy matters)
- (Emergency measure only: In the event that Department Head approval is required and it is difficult or impossible to obtain such approval due to time urgencies and circumstances, this form should be sent to the Chairman of the Intake Committee for signature in lieu of Department Head.)

☐ Signature required

Sign: _____

Date: _____

28. Finance Committee Signature (Only required to keep administrative collection staff from contacting the client with regards to a past due invoice (see 12b).)

☐ Signature required

Sign: _____

Date: _____

#5 Attachment

Name all relevant related parties (if corporation, include list of Officers and Directors):

CLIENT STATISTICS

Quickie, LLC (51822)

<u>Aged WIP and A/R</u>						
	<u>Current</u>	<u>31 - 60</u>	<u>61 - 90</u>	<u>91 - 120</u>	<u>121 - 180</u>	<u>Over 180</u>
A/R	\$ 922.34	\$ 2,603.72	\$ 39,158.32	\$ 19,123.02	\$ 148.65	\$ 0.00
WIP	\$ 2,960.80	\$ 3,720.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00
						Total
						\$ 61,956.05
						\$ 6,681.40

<u>Unbilled WIP</u>		<u>Unapplied Funds</u>	
Hours	30.40	Retainer	\$ 0.00
Fees	\$ 6,666.50	Cash	\$ 0.00
Costs	\$ 14.90	O/A Fees	\$ 0.00
Total WIP	\$ 6,681.40	O/A Costs	\$ 0.00

<u>Total Worked and Billed</u>				
	<u>Hours</u>		<u>Value</u>	
	<u>Worked</u>	<u>Billed</u>	<u>Worked</u>	<u>Billed</u>
MTD	0.00	0.00	\$ 0.00	\$ 0.00
YTD	797.05	749.75	\$ 229,513.50	\$ 218,411.50

<u>Billing and Payment History</u>							
	<u>Fees</u>		<u>Retainers</u>			<u>Costs</u>	
	<u>Billed</u>	<u>Paid</u>	<u>Billed</u>	<u>Paid</u>	<u>Applied</u>	<u>Billed</u>	<u>Paid</u>
MTD	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00
YTD	\$ 218,411.50	\$ 167,894.98	\$ 0.00	\$ 72,500.00	\$ 0.00	\$ 14,741.01	\$ 11,777.18

<u>Write-Offs Life-To-Date</u>					
	<u>Fees</u>	<u>Costs</u>	<u>Retainer</u>	<u>O/A Fees</u>	<u>O/A Costs</u>
LTD	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00

EXHIBIT AA

GREENBERG
ATTORNEYS AT LAW
TRAURIG

FILE

Todd S. Sharinn
212-801-2157
sharinn@gtlaw.com

VIA FIRST CLASS MAIL

December 3, 2002

Alan Fell, Esq.
S & A Rings LLC
c/o Rick, Steiner P.C.
3 New York Plaza
New York, NY 10004

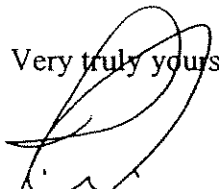
Re: Quickie, LLC
Re-examination of U.S. Patent No. 6,066,160 by Medtronic
Our Reference: 51822

Dear Alan:

We enclose papers relating to Medtronic Inc.'s Request for Re-Examination of U.S. Patent No. 6,066,160 filed with the United States Patent and Trademark Office on November 22, 2002.

Please contact the undersigned to discuss.

Very truly yours,



Todd S. Sharinn

TSS:ai
Enclosure

cc: Steve Colvin, MD (w/out enclosures)

EXHIBIT

66
6-2008

GREENBERG TRAURIG, LLP

885 THIRD AVENUE

NEW YORK, NEW YORK 10022-4834

212-801-2100 FAX 212-688-2449 www.gtlaw.com

ATLANTA BOCA RATON BOSTON CHICAGO DENVER FORT LAUDERDALE LOS ANGELES MIAMI NEW YORK ORLANDO PHILADELPHIA PHOENIX
TALLAHASSEE TYSONS CORNER WASHINGTON, D.C. WEST PALM BEACH WILMINGTON

EXHIBIT AB

GREENBERG
ATTORNEYS AT LAW
TRAUBIG

02/16/15 11:12:11

Transmittal Cover Sheet

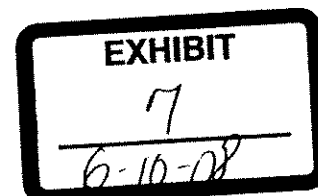
TO Marsha Twitty
Company U.S. Patent and Trademark Office
Fax Number 703-305-1013
Phone Number 703-308-9692
FROM Linda Garramone
File Number 51822.010700
Comments Change of Correspondence Address and Fee Address Indication Form

Date December 16, 2002
No. Pages Including this cover sheet 4

Please notify us immediately if not received properly at 212-801-2100

The information contained in this transmission is attorney privileged and confidential. It is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone collect and return the original message to us at the address below via the U.S. Postal Service. We will reimburse you for your postage. Thank you.

885 Third Avenue, New York, New York 10022 (212) 801-2100 Fax (212) 688-2449



GT 0000380

MESSAGE CONFIRMATION

12/16/2002 12:21
ID=GREENBERG/TRAURIG

DATE	S,R-TIME	DISTANT STATION ID	MODE	PAGES	RESULT
12/16	02'00"	7033051013	TX	004	OK 0000

12/16/2002 12:18 GREENBERG/TRAURIG → 51822#010700#17033051013 NO.984 0001

GREENBERG
ATTORNEYS AT LAW
TRAURIG

02 DEC 16 AM 11:11

Transmittal Cover Sheet

TO	Marsha Twitty
Company	U.S. Patent and Trademark Office
Fax Number	703-305-1013
Phone Number	703-308-9692
FROM	Linda Garramone
File Number	51822.010700
Comments	Change of Correspondence Address and Fee Address Indication Form

GT 0000381

Please type a plus sign (+) inside this box →



PTO/SB/123 (10-00)

Approved for use through 10/31/2002. OMB 0651-0035

U.S. Patent and Trademark Office, U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

CHANGE OF CORRESPONDENCE ADDRESS <i>Patent</i> Address to: Assistant Commissioner for Patents Washington, D.C. 20231	Patent Number	6,066,160
	Issue Date	May 23, 2000
	Application Number	09/198,087
	Filing Date	November 23, 1998
	First Named Inventor	Colvin

Please change the Correspondence Address for the above-identified patent to:

☐ Customer Number → Place Customer
Number Bar Code
Label here

OR

☐ Type Customer Number here

Firm or Individual Name	Todd S. Sharinn				
Address	Greenberg Traurig, LLP				
Address	885 Third Avenue, 21st Floor				
City	New York	State	NY	ZIP	10022
Country	US				
Telephone	212-801-2157		Fax	212-688-2449	

This form cannot be used to change the data associated with a Customer Number. To change the data associated with an existing Customer Number use "Request for Customer Number Data Change" (PTO/SB/124).

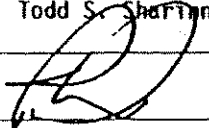
This form will not affect any "fee address" provided for the above-identified patent. To change a "fee address" use the "Fee Address Indication Form" (PTO/SB/47).

I am the :

☐ Patentee.

☐ Assignee of record of the entire interest. See 37 CFR 3.71.
Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96).

☒ Attorney or agent of record.


Typed or Printed Name	Todd S. Sharinn
Signature	
Date	October 22, 2002

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.

☐ Total of _____ forms are submitted.

Burden Hour Statement: This form is estimated to take 3 minutes to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.

GT 0000382

CERTIFICATE OF MAILING BY FIRST CLASS MAIL (37 CFR 1.8) Applicant(s): Colvin et al.			Docket No. 51822.010700
Serial No. 09/198,087	Filing Date November 23, 1998	Examiner Gary Jackson	Group Art Unit 3731
Invention: PASSIVE KNOTLESS SUTURE TERMINATOR FOR USE IN MINIMALLY INVASIVE SURGERY AND TO FACILITATE STANDARD TISSUE SECURING			
<p>I hereby certify that this <u>Change of Correspondence Address, Fee Address Indication Form & Post Card</u> <small>(Identify type of correspondence)</small></p> <p>is being deposited with the United States Postal Service as first class mail in an envelope addressed to: The Assistant Commissioner for Patents, Washington, D.C. 20231 on <u>October 22, 2002</u> <small>(Date)</small></p> <div style="text-align: center; margin-top: 20px;"> <p>Linda Garramone <small>(Typed or Printed Name of Person Mailing Correspondence)</small></p>  <small>(Signature of Person Mailing Correspondence)</small> </div> <p style="text-align: center; margin-top: 40px;"> <small>Note: Each paper must have its own certificate of mailing.</small> </p>			

POT/REV03

GT 0000384

EXHIBIT AC

GREENBERG
ATTORNEYS AT LAW
TRAUBIG

COPY

Todd S. Sharinn
212-801-2157
tsharinn@gdlaw.com

January 29, 2003

Dr. Stephen B. Colvin
530 First Avenue - Suite 9V
New York, New York 10016-0648

Re: NON-SLIP SURGICAL INCISE DRAPE
Our Reference: 51822.010800

Dear Steve:

It was great speaking with you earlier today. I was particularly pleased to learn of your most recent success in the Quickie v. Medtronic matter.

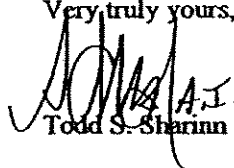
We enclose the most recent draft of the Non-Slip Surgical Incise Drape patent application, which we prepared at your request. Kindly review the contents of this document, and forward any comments, questions or suggestions you may have. You will note that this draft now includes the embodiment incorporating the grit surface.

I look forward to discussing the application with you shortly.

In the interim, if you have any questions or comments please do not hesitate to contact me.

Dictated but not read.

Very truly yours,


Todd S. Sharinn

TSS:ai
Enclosures

cc: Alan Fell, Esq.
(w/out enclosures)

EXHIBIT

39

GREENBERG TRAUBIG, LLP
885 THIRD AVENUE
NEW YORK, NEW YORK 10022-4834
212-801-2100 FAX 212-688-2449 www.gtlaw.com
NEW YORK ATLANTA BOCA RATON BOSTON CHICAGO DENVER FORT LAUDERDALE LOS ANGELES MIAMI ORLANDO PHILADELPHIA PHOENIX
TALLAHASSEE TYSONS CORNER WASHINGTON, D.C. WEST PALM BEACH WILMINGTON

RS002051

EXHIBIT AD

GREENBERG
ATTORNEYS AT LAW
TRAURIG

COPY

Todd S. Sharinn
212-801-2157
tsharinn@gtlaw.com

February 21, 2003

Dr. Stephen B. Colvin
530 First Avenue - Suite 9V
New York, New York 10016-0648

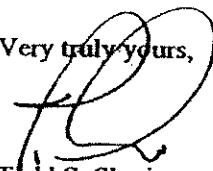
Re: US Patent Application Serial No.: 09/660,745
CONCENTRIC PASSIVE KNOTLESS SUTURE TERMINATOR
Our Reference: 51822.010200

Dear Steve:

This is to advise you of the status of the above noted application. We telephoned the Examiner who explained that there has been a heavy backlog of applications and some art groups are currently being assigned applications in whose art the examiner does not specialize. This is being done to alleviate the work load burdening the specialty art groups in an effort to ameliorate the waiting time for examination of all applications.

On the basis of our telephone calls to the Examiner, we expect to receive the first office action shortly. We will advise you upon our receipt of same. In the interim, if you have any questions or concerns please do not hesitate to contact me.

Very truly yours,


Todd S. Sharinn

TSS:ai

cc: Alan Fell, Esq. ✓

Vny2-srv01V686436v01



GREENBERG TRAURIG, LLP
885 THIRD AVENUE
NEW YORK, NEW YORK 10022-4834
212-801-2100 FAX 212-688-2449 www.gtlaw.com
NEW YORK ATLANTA BOCA RATON BOSTON CHICAGO DENVER FORT LAUDERDALE LOS ANGELES MIAMI ORLANDO PHILADELPHIA PHOENIX
TALLAHASSEE TYSONS CORNER WASHINGTON, D.C. WEST PALM BEACH WILMINGTON

RS002822

EXHIBIT AE

Theleen Reid & Priest LLP
Attorneys At Law

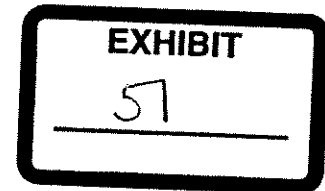
225 West Santa Clara Street, Suite 1200
San Jose, CA 95113-1723

Tel. 408.292.5800
Fax 408.287.8040

www.theleenreid.com

Hal Bohner:
hbohner@theleenreid.com

April 16, 2003



Steve Colvin
Quickie LLC
3 New York Plaza
New York, NY 10004

Re: United States Patent No. 6,066,160
Entitled: "Passive Knotless Suture Terminator For Use In Minimally
Invasive Surgery and to Facilitate Standard Tissue Securing"
Issued: May 23, 2000
Inventors: Colvin et al

Dear Mr. Colvin:

Enclosed please find a copy of the Statement of Patent Owner and Amendment in
Reexamination for the above referenced application as filed with the United States Patent Office
on March 17, 2003 for your records.

Also, enclosed is a copy of Power of Attorney/Revocation of Prior Powers of Attorney
filed with the United States Patent and Trademark Office on March 20, 2003 for your records.

If you have any questions, please do not hesitate to contact us.

Very truly yours,

A handwritten signature in black ink, appearing to read "Hal Bohner".

Hal Bohner

HB/av

Enclosure

cc: Mark Evens

Robert E. Krebs

SV #129205 v1

QUICK 005086

Serial/Patent No.: 6006160 Filing/Issue Date: 5/23/00

Applicant: Stephen Colvin et al

Title: Passive Knotless Suture Terminator for use in Minimally Invasive Surgery and to Facilitate Standard Tissue Securing

TRP Docket No.: 034521-003 Atty/Sec'y Initials: REK/HB/zv

Date Mailed: 3/20/05 Docket Due Date: _____

The following has been received in the U.S. Patent & Trademark Office on the date stamped hereon:

<input type="checkbox"/> Amendment/Response (____ pgs.) <input type="checkbox"/> Appeal Brief (____ pgs.) (in triplicate) <input type="checkbox"/> Application - Utility (____ pgs. with cover & abstract) <input type="checkbox"/> Application - Rule 1.53(b) Continuation (____ pgs.) <input type="checkbox"/> Application - Rule 1.53(b) Division (____ pgs.) <input type="checkbox"/> Application - Rule 1.53(b) CBP (____ pgs.) <input type="checkbox"/> Application - Rule 1.53(d) CPA (____ pgs.) <input type="checkbox"/> Application - PCT (____ pgs.) <input type="checkbox"/> Application - Provisional (____ pgs.) <input type="checkbox"/> Assignment and Cover Sheet <input type="checkbox"/> Certificate of Correction <input checked="" type="checkbox"/> Certificate of Mailing <input type="checkbox"/> Declaration & POA (____ pgs.) <input type="checkbox"/> Fee Transmittal <input type="checkbox"/> Drawings (informal): _____ # of sheets includes _____ figures <input checked="" type="checkbox"/> Other: Change of Address and docket number; Revocation of Power of Attorney	<input type="checkbox"/> IDS & PTO 1449 (____ pgs.) <input type="checkbox"/> _____ Pieces of Prior Art Enclosed <input type="checkbox"/> Issue Fee Transmittal <input type="checkbox"/> Submission of Formal Drawings: _____ # of sheets includes _____ figures <input type="checkbox"/> Notice of Appeal <input checked="" type="checkbox"/> Postcard <input type="checkbox"/> Preliminary Amendment (____ pgs.) <input type="checkbox"/> Reply Brief (____ pgs.) <input type="checkbox"/> Req and Cert. Not to Publish - Rule 1.213 <input type="checkbox"/> Request for Continued Examination (RCE) (____ pgs.) <input type="checkbox"/> Request for Extension of Time _____ Month(s) <input type="checkbox"/> Response to Notice to File Missing Parts <input type="checkbox"/> Copy of PTO Notice to File Missing Parts <input type="checkbox"/> Transmittal Letter (original & copy) <input type="checkbox"/> Express Mail No.: <input type="checkbox"/> Check(s) \$ <input type="checkbox"/> Deposit Acct. No. 50-1698 \$ Patent Code: Client/Matter # <u>34521 - 3</u>
---	---

QUICK 005087

QLLC 0062221

PATENT

Practitioner's Docket No. 034521-002

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Patent No: 6,066,160

Issued: May 23, 2000

Title: PASSIVE KNOTLESS SUTURE TERMINATOR FOR USE IN
MINIMALLY INVASIVE SURGERY AND TO FACILITATE
STANDARD TISSUE SECURING

Inventors: Stephen Colvin, Eugene Grossi, Allan Katz, Paul Oddo

Commissioner of Patents and Trademarks
Washington, D.C. 20231

POWER OF ATTORNEY BY ASSIGNEE OF ENTIRE INTEREST
(REVOCATION OF PRIOR POWERS)

As assignee of record of the entire interest of the above identified patent,

REVOCATION OF PRIOR POWERS OF ATTORNEY

all powers of attorney previously given are hereby revoked and

NEW POWER OF ATTORNEY

the following attorney(s) and/or agent(s) are hereby appointed to prosecute and
transact all business in the Patent and Trademark Office connected therewith.

Robert E. Krebs, Registration No. 25,885; David B. Ritchie, Registration No. 31,562; Marc S.
Hanish, Registration No. 42,626; John P. Schaub, Registration No. 42,125; Adrienne
Yeung, Registration No. 44,000; Steven J. Robbins, Registration No. 40,299; Thierry K. Lo,
Registration No. 49,097; William Samuel Niece, Registration No.: 47,824; J. Davis Gilmer,
Registration No. 44,711; William E. Winters, Registration No. 42,232; Masako Ando, (37
C.F.R. §10.9 (b)); and John Klaas Uilkema, Registration No. 20,282; Becky L. Troutman,
Registration No. 36,703; Hal J. Bohner, Registration No. 27,856;

QUICK 005088

QLLC 0062222

Quickie, LLC

(type or print identity of assignee of entire interest)

3 New York Plaza
Attn: Alan Fell
New York, NY 10004

Address

Recorded in PTO on 11/23/1998
Reel 9608
Frame 0640

ASSIGNEE STATEMENT

The undersigned states that he is authorized to act on behalf of the assignee.

Date 3/4/03

Aubrey C. Galloway
Signature

Aubrey C. Galloway
(type or print name of person authorized to sign
on behalf of assignee)

Managing Partner
Title

QUICK 005089

Attorney Docket No. 034521-003

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: Stephen Colvin, Eugene Grossi, Allan Katz, Paul Oddo
PATENT NO.: 6,066,160
ISSUE DATE: May 23, 2000
TITLE: PASSIVE KNOTLESS SUTURE TERMINATOR FOR USE IN
MINIMALLY INVASIVE SURGERY AND TO FACILITATE
STANDARD TISSUE SECURING
EXAMINER: Woo, J.
ART UNIT: 3731

CERTIFICATE OF MAILING

I hereby certify that this paper is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Commissioner for Patents, Washington, DC 20231, on the date printed below

Date: 3/20/03

Name: Annette Valdivia
Annette Valdivia

COMMISSIONER FOR PATENTS
WASHINGTON, D.C. 20231

CHANGE OF ATTORNEY DOCKET NUMBER
AND CHANGE OF ADDRESS NOTICE

Please change the Attorney Docket No. for this patent application from
034521-002 to 034521-003.

Please address all further communications regarding this application to:

Robert E. Krebs
Thelen Reid & Priest LLP
P.O. Box 640640
San Jose, CA 95164-0640
Telephone (408) 292-5800; Facsimile (408) 287-8040

Respectfully submitted,
THELEN REID & PRIEST LLP

Dated: 20 March, 2003

Hal Jay Bohrer
Hal Jay Bohrer
Reg. No. 27,856

QUICK 005090

QLLC 0062224

EXHIBIT AF

05/19/2003

10:09

GREENBERG TRAURIG + 21010200412122632246

NO. 549

003

GREENBERG
ATTORNEYS AT LAW
TRAURIG

Todd S. Sharinn
212-801-2157
tsharinn@gtlaw.com

May 15, 2003

Quickie, LLC
c/o Rick, Steiner, Segal & Fell
Three New York Plaza
New York, New York 10004
Attn: Alan Fell, Esq.

Re: Quickie, LLC
Reexamination of U.S. Patent No. 6,066,160 by Medtronic
Our Ref. 51822.010900

Dear Alan:

We enclose for your information and records, a copy of a Notice Regarding Change of Power of Attorney filed in connection with the above-referenced re-examination application. While we are surprised to have received this document in view of the conversations I had with Dr. Colvin, we respect his decision and will take no further action on this matter.

If we could be of any additional assistance with this matter in the future, please do not hesitate to contact the undersigned. In the interim, kindly note that, it is firm policy that all outstanding fees and expenses incurred in connection with matters be paid upon closing of the same. For your convenience, we will forward our final bills under separate cover.

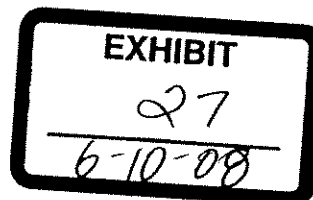
Very truly yours,

Todd S. Sharinn

TSS/ai

Cc: Stephen B. Colvin, M.D.

GREENBERG TRAURIG, LLP
883 THIRD AVENUE
NEW YORK, NEW YORK 10022-4834
212-801-2100 Fax 212-680-2449 www.gtlaw.com
NEW YORK ATLANTA BOCA RATON BOSTON CHICAGO DENVER FORT LAUDERDALE LOS ANGELES MIAMI ORLANDO PHILADELPHIA PHOENIX
SAN FRANCISCO WASHINGTON, D.C. WEST PALM BEACH WILMINGTON



QLLC 0103020

05/19/2003

10:09

GREENBERG/TRAURIG + 24010200412122632246

NO.549

D04

Page 1 of 1



Communication for Patent
Washington, DC 20531
www.uspto.gov

APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
09/198,087	11/23/1998	STEPHEN COLVIN	QUIC-1

CONFIRMATION NO. 2002



"0C000000009757041"

Todd S. Sharinn
Greenburg Traurig LLP
885 Third Avenue 21st Floor
New York, NY 10022

Date Mailed: 04/02/2003

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 04/02/2003.

- The Power of Attorney to you in this application has been revoked by the assignee who has intervened as provided by 37 CFR 3.71. Future correspondence will be mailed to the new address of record (37 CFR 1.33).

DAVID O LIPSCOMB
OPR (703) 308-7127

FORMER ATTORNEY/AGENT COPY

QLLC 0103021

EXHIBIT AG

GREENBERG
ATTORNEYS AT LAW
TRAURIG

Todd S. Sharinn
212-801-2157
sharinn@gtlaw.com

October 14, 2003

Quickie Vision LLC
c/o. Rick, Steiner, Segal & Fell
Three New York Plaza
New York, NY 10004

Attn: Rick Steiner

Re: Concentric Passive Knotless Suture Terminator
Our. Ref. No.: 55217.010200

Dear Rick:

Enclosed please find invoice no. 1112914 for fees and expenses incurred through September 30, 2003. The total amount of the invoice is \$2,776.02. Please note that this amount includes an outstanding balance of \$615.12.

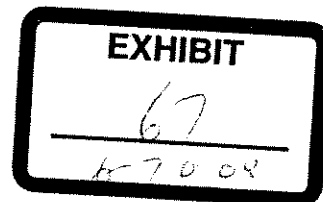
If you have any questions, please do not hesitate to contact me.

Very truly yours,



Todd S. Sharinn

Enclosures



GREENBERG TRAURIG, LLP
885 THIRD AVENUE
NEW YORK, NEW YORK 10022-4834
212-801-2100 FAX 212-688-2449 www.gtlaw.com
NEW YORK ATLANTA BOCA RATON BOSTON CHICAGO DENVER FORT LAUDERDALE LOS ANGELES MIAMI ORLANDO PHILADELPHIA PHOENIX
TALLAHASSEE TYSONS CORNER WASHINGTON, D.C. WEST PALM BEACH WILMINGTON

RS002748

EXHIBIT AH

GREENBERG
ATTORNEYS AT LAW
TRAURIG

Todd S. Sharinn
212-801-2157
sharinn@gtlaw.com

December 2, 2003

Dr. Stephen B. Colvin
530 First Avenue - Suite 9V
New York, New York 10016-0648

Re: US Patent Application Serial No.: 09/660,745
CONCENTRIC PASSIVE KNOTLESS SUTURE TERMINATOR
Our Reference: 51822.010200

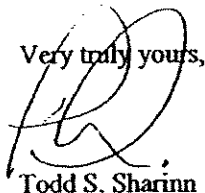
Dear Steve:

I am pleased to inform you that the U.S. patent examiner has issued a notice of allowance in this application. A copy of the notice of allowance and issue fee due and the notice of allowability are enclosed for your files.

The issue fee is due on or before February 24, 2004. There is no possibility of obtaining an extension of time and if a response to this notice is not filed by the February 24, 2004 due date this application will go abandoned. The Examiner's reasons for allowance appear to be acceptable. If you wish to respond, the response must be filed no later than the date of payment of the issue fee.

Please contact me at your earliest convenience with your instructions. I look forward to hearing from you.

Very truly yours,


Todd S. Sharinn

Enclosures

cc: Alan Fell, Esq.



Wny2-srv01\715588v01
GREENBERG TRAURIG, LLP
885 THIRD AVENUE
NEW YORK, NEW YORK 10022-4834
212-801-2100 FAX 212-688-2449 www.gtlaw.com
NEW YORK ATLANTA BOCA RATON BOSTON CHICAGO DENVER FORT LAUDERDALE LOS ANGELES MIAMI ORLANDO PHILADELPHIA PHOENIX
TALLAHASSEE TYSONS CORNER WASHINGTON, D.C. WEST PALM BEACH WILMINGTON

GT 0000508

MESSAGE CONFIRMATION

12/02/2003 10:49
ID=GREENBERG/TRAURIG

DATE	S.R-TIME	DISTANT STATION ID	MODE	PAGES	RESULT
12/02	04:09"	2122636546	CALLING	14	OK 0000

12/02/2003 10:44 GREENBERG/TRAURIG → 2#010200#12122632246 NO.346 001

GREENBERG
ATTORNEYS AT LAW
TRAURIG

Transmittal Cover Sheet

TO	Dr. Stephen Colvin	Company
Fax Number	212-263-2246	Phone Number
FROM	Todd Sharinn	
File Number	51822.010200	
Comments		

GT 0000509



Transmittal Cover Sheet

TO	Dr. Stephen Colvin	Company
Fax Number	212-263-2246	Phone Number
FROM	Todd Sharinn	
File Number	51822.010200	
Comments		

Date December 2, 2003

Time

No. Pages Including this cover sheet 14

Please notify us immediately if not received properly at 212-801-2100.

The information contained in this transmission is attorney privileged and confidential. It is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone collect and return the original message to us at the address below via the U.S. Postal Service. We will reimburse you for your postage. Thank you.

885 Third Avenue, New York, New York 10022 (212) 801-2100 Fax (212) 688-2449

GT 0000510

EXHIBIT AI

EXHIBIT

44

GREENBERG
ATTORNEYS AT LAW
TRAURIG

Todd S. Sharinn
212-801-2157
sharinn@gtlaw.com

December 2, 2003

Alan Fell, Esq.
S & A Rings LLC
c/o Rick, Steiner P.C.
3 New York Plaza
New York, NY 10004

Re: US Patent Application Serial No.: 09/660,745
CONCENTRIC PASSIVE KNOTLESS SUTURE TERMINATOR
Our Reference: 51822.010200

Dear Alan:

I hope this letter finds you well and having enjoyed a bountiful Thanksgiving. I am pleased to inform you that the U.S. patent examiner has issued a notice of allowance for the above-referenced patent application. A copy of the notice of allowance and issue fee due and the notice of allowability are enclosed for your files.

After you have had a chance to review the same, please give me a call so that we may discuss. As time is of the essence, I would like to get this matter handled as soon as possible in order to avoid abandonment.

I look forward to hearing from you.

Very truly yours,


Todd S. Sharinn

Enclosures

Vny2-srv01\715588v01

GREENBERG TRAURIG, LLP
885 THIRD AVENUE
NEW YORK, NEW YORK 10022-4834
212-801-2100 FAX 212-688-2449 www.gtlaw.com

NEW YORK ATLANTA BOCA RATON BOSTON CHICAGO DENVER FORT LAUDERDALE LOS ANGELES MIAMI ORLANDO PHILADELPHIA PHOENIX
TALLAHASSEE TYSONS CORNER WASHINGTON, D.C. WEST PALM BEACH WILMINGTON

GT 0000505

MESSAGE CONFIRMATION

12/02/2003 10:43
ID=GREENBERG/TRAURIG

DATE	S,R-TIME	DISTANT STATION ID	MODE	PAGES	RESULT
12/02	04:11"	212 422 0158	CALLING	14	OK 0000

12/02/2003 10:38 GREENBERG/TRAURIG → 2#010200#12124220158 NO.345 001

GREENBERG
ATTORNEYS AT LAW
TRAURIG

Transmittal Cover Sheet

TO	Alan Fell	Company
Fax Number	212-422-0158	Phone Number
FROM	Todd Sharinn	
File Number	51822.010200	
Comments		

GT 0000506



Transmittal Cover Sheet

TO	Alan Fell	Company
Fax Number	212-422-0158	Phone Number
FROM	Todd Sharinn	
File Number	51822.010200	
Comments		

Date	December 2, 2003
Time	
No. Pages	Including this cover sheet 14

Please notify us immediately if not received properly at 212-801-2100.

The information contained in this transmission is attorney privileged and confidential. It is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone collect and return the original message to us at the address below via the U.S. Postal Service. We will reimburse you for your postage. Thank you.

885 Third Avenue, New York, New York 10022 (212) 801-2100 Fax (212) 688-2449

GT 0000507

EXHIBIT AJ

Thelen Reid & Priest LLP
Attorneys At Law

Mark Fox Evens
202.508.4053 Direct Dial
202.654.1831 Direct Fax
mevens@thelenreid.com

701 Pennsylvania Avenue, N.W., Suite 800
Washington, DC 20004-2608
Tel. 202.508.4000
Fax 202.508.4321
www.thelenreid.com

April 6, 2004

The Honorable Gerard E. Lynch
United States District Judge
United States District Court
Southern District of New York
United States Courthouse
40 Centre Street, Room 803
New York, NY 10007

RE: *Quickie, LLC v. Medtronic, Inc., Southern District of New York, 02 CV
1157 (SDNY) GEL*

Dear Judge Lynch:

By this letter, both Plaintiff Quickie, LLC and Defendant Medtronic, Inc., jointly advise this Court of the initial office action taken by the examiner at the United States Patent and Trademark Office ("USPTO") in response to the *ex parte* reexamination requested by Defendant. A copy of the office action is attached hereto. In the office action, the examiner rejected claims 1 through 23, 28, 29 and 31 through 59. This office action materially affects this case because Quickie has alleged that Medtronic infringed Claims 13 and 33 (and the related dependant claims) which have now been preliminarily rejected by the examiner. Under USPTO rules, Quickie's response to this initial office action is due within 60 days of the action. With the rejection of those claims, though not a final agency action, the parties believe that the best interests of justice would be served by staying this case for six months.

A two week trial in this matter is currently scheduled to begin May 3. The parties are preparing oppositions to a dozen recently filed motions *in limine* that are due on or about April 9th. A stay would ensure that the parties will not needlessly spend attorneys' fees and the Court's time while Quickie responds to the examiner's rejection of the pertinent claims.

Quickie and Medtronic respectfully request that the Court schedule a conference with counsel as soon as possible to discuss the best way to proceed in view of the office action.

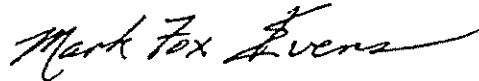
DC #165422 v2

Thelen Reid & Priest LLP

The Honorable Gerard E. Lynch
April 6, 2004
Page 2

The parties regret any inconvenience this request causes to the Court.

Cordially yours,

A handwritten signature in cursive script that reads "Mark Fox Evens".

Mark Fox Evens

Enclosure

cc: Michael Sommer, Esq.
Brian Ferguson, Esq.
Dr. Stephen Colvin

04/02/2004 14:41 FAX 703 305 3782

TC3700 DIRECTOR'S OFFICE

002/012



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
 United States Patent and Trademark Office
 Address: COMMISSIONER FOR PATENTS
 P.O. Box 1450
 Alexandria, Virginia 22313-1450
 www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
90/006,460	11/25/2002	6066160		3789

7590 04/02/2004

Robert E. Krebs
 Thelen Reid & Priest LLP
 P.O. Box 640640
 San Jose, CA 95164-0640

EXAMINER

Woo

ART UNIT	PAPER NUMBER
----------	--------------

3731

12

DATE MAILED: 04/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

04/02/2004 14:42 FAX 703 305 3762

TC3700 DIRECTOR'S OFFICE

003/012

Office Action in Ex Parte Reexamination	Control No. 90/006,460	Patent Under Reexamination 6066160	
	Examiner Julian W. Woo	Art Unit 3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

a ☒ Responsive to the communication(s) filed on 05 December 2003. b ☐ This action is made FINAL.

c ☐ A statement under 37 CFR 1.530 has not been received from the patent owner.

A shortened statutory period for response to this action is set to expire 2 month(s) from the mailing date of this letter. Failure to respond within the period for response will result in termination of the proceeding and issuance of an *ex parte* reexamination certificate in accordance with this action. 37 CFR 1.550(d). EXTENSIONS OF TIME ARE GOVERNED BY 37 CFR 1.550(c). If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

1. ☒ Notice of References Cited by Examiner, PTO-892. 3. ☐ Interview Summary, PTO-474.

2. ☒ Information Disclosure Statement, PTO-1449. 4. ☐ _____.

Part II SUMMARY OF ACTION

1a. ☐ Claims _____ are subject to reexamination.

1b. ☐ Claims _____ are not subject to reexamination.

2. ☐ Claims _____ have been canceled in the present reexamination proceeding.

3. ☒ Claims 24,27,30 are patentable and/or confirmed.

4. ☒ Claims 1-23,28,29 and 31-59 are rejected.

5. ☐ Claims _____ are objected to.

6. ☐ The drawings, filed on _____ are acceptable.

7. ☐ The proposed drawing correction, filed on _____ has been (7a) ☐ approved (7b) ☐ disapproved.

8. ☐ Acknowledgment is made of the priority claim under 35 U.S.C. § 119(a)-(d) or (f).

a) ☐ All b) ☐ Some* c) ☐ None of the certified copies have

1 ☐ been received.

2 ☐ not been received.

3 ☐ been filed in Application No. _____.

4 ☐ been filed in reexamination Control No. _____.

5 ☐ been received by the International Bureau in PCT application No. _____.

* See the attached detailed Office action for a list of the certified copies not received.

9. ☐ Since the proceeding appears to be in condition for issuance of an *ex parte* reexamination certificate except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

10. ☐ Other: _____

cc: Requester (if third party requester)

04/02/2004 14:42 FAX 703 305 3782

TC3700 DIRECTOR'S OFFICE

004/012

Application/Control Number: 90/006,460
Art Unit: 3731

Page 2

DETAILED ACTION***Reexamination***

1. Claims 35-44 are rejected under 35 U.S.C. 305 as enlarging the scope of the claim(s) of the patent being reexamined. In 35 U.S.C. 305, it is stated that "[n]o proposed amended or new claim enlarging the scope of a claim of the patent will be permitted in a reexamination proceeding... ." A claim presented in a reexamination "enlarges the scope" of the patent claim(s) where the claim is broader than any claim of the patent. A claim is broader in scope than the original claims if it contains within its scope any conceivable product or process which would not have infringed the original patent. A claim is broadened if it is broader in any one respect, even though it may be narrower in other respects. These new claims broaden the scope of the patent claims with respect to the "locking means," which is cited as comprising a cam or cam member. Claims 35-44 depend from claim 1, an independent, means-plus-function claim, which during prosecution of the parent application (09/198087), was directed to an embodiment shown in figures 1-3 of the patent, where the structure of the "locking means" is not a cam or cam member.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 33, 35-44, and 59 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. With respect to claims 33 and 59, "the

04/02/2004 14:42 FAX 703 305 3762

TC3700 DIRECTOR'S OFFICE

005/012

Application/Control Number: 90/006,460
Art Unit: 3731

Page 3

middle aperture," "said first cavity," and "said second cavity" lack antecedent bases. Claims 35-44 cite that the "locking means" comprises a cam or cam member, which is a structure not linked to the embodiment originally claimed as the "locking means" in claim 1 of U.S. Patent No. 6,066,160.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-12, 32, 34, and 45-48 are rejected under 35 U.S.C. 102(b) as being anticipated by Emery (3,988,810). Emery discloses, in the figures, a suture securing apparatus comprising an apparatus body having an upper surface (e.g., at 26), a lower surface (23); a round, first internal surface (at 25); an angulated, second internal surface (at 24) at an acute angular narrowing (with respect to the axis running along the suture shown in figure 3 or 7), an outer surface (27 or 28), first and second apertures that are mirror images of each other (see fig. 7), and an integral locking means comprising at least one ridge (30 or 41), where each aperture has longitudinal and latitudinal axes (located along and/or between the first and second internal surfaces) facilitating longitudinal and latitudinal directions for a suture (T), where each ridge is formed of a rigid, biocompatible NYLON material (see col. 1, lines 19-23, for its use wearing apparel, and col. 3, lines 9-11) and has a rounded surface farthest from the aperture

04/02/2004 14:42 FAX 703 305 3782

TC3700 DIRECTOR'S OFFICE

0006/012

Application/Control Number: 90/006,460
Art Unit: 3731

Page 4

surface (see figures 3 and 4), where each ridge is formed at an angle greater than about 30 deg. or at an angle of about 45 deg. (see col. 2, lines 9-15).

6. Claims 13-21, and 33 are rejected under 35 U.S.C. 102(b) as being anticipated by Plante (5,070,805). Plante discloses, in the figures, a suture securing apparatus with an apparatus body having an upper surface (at 50), a lower surface (at 50), an outer surface (21), first and second apertures (14, 15) each with a longitudinal axis and upper, middle and lower portions; and movable, serrated cam members (36 and 37 as seen in fig. 6); where each middle portion of an aperture has ridges (48, 49) formed of elastic or rigid materials (see col. 1, lines 35-42), and where the first and second apertures and the first and second cam members are mirror images of each other.

7. Claims 13 and 49-58 are rejected under 35 U.S.C. 102(b) as being anticipated by Preissman (5,540,698). Preissman discloses, in figures 1, 5, 7, and 10-12, a suture securing apparatus with an apparatus body (86) having an upper surface (e.g., at the side of 48), a lower surface, an outer surface, an aperture (fig. 7) with a longitudinal axis and upper, middle and lower portions; a movable cam member (60), a retaining wall (the side of the aperture that is part of 100), and where the middle portion of an aperture a swollen, rounded cavity and opposing first and second surfaces (an angulated surface and an orthogonal surface with respect to the suture's longitudinal axis), where the middle portion is wider than the upper and lower portions, where the cam member has a rounded, engagement end and a rotation end (at 62), where the rotation end is wider than the widths of the upper and lower portions portion of the aperture and is near the second surface, and where the engagement end is near the first surface.

04702/2004 14:43 FAX 703 305 3782

TC3700 DIRECTOR'S OFFICE

007/012

Application/Control Number: 90/006,460
Art Unit: 3731

Page 5

8. Claims 33 and 59 are rejected under 35 U.S.C. 102(b) as being anticipated by Creager (536,684). Creager discloses, in the figures, a suture securing apparatus with an apparatus body (A), first and second apertures (F) each with a longitudinal axis and a cavity (J), and first and second movable cam members (B); where the first and second apertures and the first and second cam members are mirror images of each other.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

10. Claims 22, 23, 28, 29, and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Plante. Plante discloses the invention substantially as claimed, but does not specifically disclose that the apparatus is made of biocompatible or biodegradable materials and that the apparatus contacts or engages a medical

04/02/2004 14:43 FAX 703 305 3762

TC3700 DIRECTOR'S OFFICE

008/012

Application/Control Number: 90/006,460

Page 6

Art Unit: 3731

prosthesis device. Nevertheless, Plante discloses, in col. 1, lines 35-42, that, depending on the application for the apparatus, the apparatus can be made of cast metal or plastic. Plante also discloses, in figure 3, that the apparatus is attached to an unspecified surface (53). Thus, it would have been a matter of design choice, to make the apparatus out of a biocompatible or biodegradable material, if an application calls for such a material. It would also be a matter of design choice to attach the apparatus to the surface of a medical prosthesis device (e.g., a bone plate or a splint), if the device and application require wiring or sutures for its securance to a patient's body part.

Patentable and/or Confirmed Subject Matter

11. Claims 24-27 and 30 are patentable and/or confirmed.
12. The following is a statement of reasons for the indication of patentable and/or confirmed subject matter: None of the prior art of record, alone or in combination discloses a securable medical prosthesis device comprising a medical prosthesis device in physical contact or engagement with, inter alia, a suture securing apparatus comprising an apparatus body having an upper surface, a lower surface, a first internal surface, a second internal surface, an outer surface, at least one aperture, and a movable cam member or a locking means comprising at least one ridge. The prior art of record also does not disclose that the abovementioned medical prosthesis device is a sewing ring implant.

04/02/2004 14:43 FAX 703 305 3762

TC3700 DIRECTOR'S OFFICE

009/012

Application/Control Number: 90/006,460
Art Unit: 3731

Page 7

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Richardson (1,243,105), Laird (1,545,501), Emery (3,574,900), and Randall (4,899,423) teach suture-securing apparatuses.

04/02/2004 14:44 FAX 703 305 3782

TC3700 DIRECTOR'S OFFICE

@010/012

Application/Control Number: 90/006,460
Art Unit: 3731

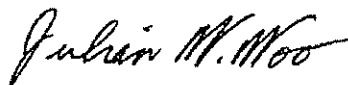
Page 8

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Julian W. Woo whose telephone number is (703) 308-0421. The examiner can normally be reached Mon.-Fri., 7:00 AM to 3:00 PM Eastern Time, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael J. Milano can be reached at (703) 308-2496.

General inquiries relating to the status of this application should be directed to the Group receptionist at (703) 308-0858. The official FAX number is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Julian W. Woo
Primary Examiner

March 30, 2004

04/02/2004 14:44 FAX 703 305 3782

TC3700 DIRECTOR'S OFFICE

011/012

Notice of References Cited	Application/Control No. 90/006,480	Applicant(s)/Patent Under Reexamination 6066160	
	Examiner Julian W. Woo	Art Unit 3731	Page 1 of 1

U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
	A	US-1,243,105	10-1917	Richardson, W.A.	24/134R
	B	US-1,545,501	07-1925	LAIRD EDWIN C	24/72.5
	C	US-3,574,900	04-1971	Emery, Reginald Jehn	24/130
	D	US-4,899,423	02-1990	Randall, Richard C.	24/134R
	E	US-5,070,805	12-1991	Plante, Wilfred M.	114/218
	F	US-			
	G	US-			
	H	US-			
	I	US-			
	J	US-			
	K	US-			
	L	US-			
	M	US-			

FOREIGN PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
	N					
	O					
	P					
	Q					
	R					
	S					
	T					

NON-PATENT DOCUMENTS

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
	U	
	V	
	W	
	X	

*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(e).)
 Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.

EXHIBIT AK

GREENBERG
ATTORNEYS AT LAW
TRAURIG

Todd S. Sharinn
212-801-2157
sharinn@gslaw.com

April 13, 2004

Dr. Stephen B. Colvin
530 First Avenue - Suite 9V
New York, New York 10016-0648

Re: US Patent Application Serial No.: 09/660,745
CONCENTRIC PASSIVE KNOTLESS SUTURE TERMINATOR
Our Reference: 51822.010200

Dear Steve:

We are pleased to inform you that the above-identified patent application has issued under U.S. Patent No. 6,716,243 B1. We enclose the formal patent deed, together with two soft copies of the patent, for your file. If you note any errors which require correction, please let us know and we will attend to obtaining a Certificate of Correction.

You may now refer to any product covered by this patent as "Covered by U.S. Patent No. 6,716,243 B1" or the like. In this regard, we note that if the benefits of the patent marking statute, 35 U.S.C. 287, are to be preserved, all products which embody the subject invention of the above-noted patent, and which are made, sold or used in or introduced into the United States by or under your authority on or after the date of the patent, should have affixed thereto a notice such as:

U.S. PATENT NO. 6,716,243 B1

If such patent marking is not applied, no damages may be recovered for infringement of the patent claims, except on proof that the infringer was notified of the infringement and continued to infringe thereafter, in which event, damages may be recovered only for infringements occurring after such notice.

Please note that maintenance fees are required to be paid at 3 1/2 years (October 6,, 2007), 7 1/2 years (October 6, 2011) and 11 1/2 years (October 6, 2015) after issuance to keep the patent in force. We have docketed these dates and will send you reminders in due course. Please let us know if your address changes so we can ensure that these reminders will reach you.

EXHIBIT

33

GREENBERG TRAURIG, LLP
885 THIRD AVENUE

NEW YORK, NEW YORK 10022-4834

212-801-2100 FAX 212-688-2449 www.gtlaw.com

ATLANTA BOCA RATON BOSTON CHICAGO DENVER FORT LAUDERDALE LOS ANGELES MIAMI NEW YORK ORLANDO PHILADELPHIA PHOENIX
TALLAHASSEE TYSONS CORNER WASHINGTON, D.C. WEST PALM BEACH WILMINGTON

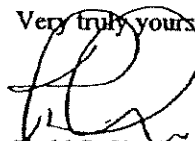
\\ny2-srv01\715588v01

GT 0000503

Dr. Stephen B. Colvin
April 13, 2004
Page 2

Kindly confirm your receipt of these patent documents by signing and dating the enclosed copy of this letter and returning it to the undersigned at the above address. If you have any questions or comments, please do not hesitate to contact us.

Very truly yours,



Todd S. Sharinn

Enclosures

cc: Alan Fell, Esq. (w/o encl.)
Eugene Grossi (w/o encl.)

RECEIPT ACKNOWLEDGED

DATED: _____

GREENBERG TRAURIG, LLP

GT 0000504

EXHIBIT AL

PTO/SB/57 (04-04)
Approved for use through 04/30/2007 OMB 0651-0033
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.
(Also referred to as FORM PTO-1465)

PTO
90007083
06/16/04

REQUEST FOR EX PARTE REEXAMINATION TRANSMITTAL FORM

Address to: **66548 U.S. PTO**
Mail Stop Ex Parte Reexam
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450
06/16/04

Attorney Docket No.: 52734-101
Date: June 16, 2004

1. ☒ This is a request for *ex parte* reexamination pursuant to 37 CFR 1.510 of patent number 6,066,160 issued May 23, 2000. The request is made by:
 - ☐ patent owner.
 - ☒ third party requester.
2. ☒ The name and address of the person requesting reexamination is:

Kenneth L. Cage

McDermott, Will & Emery, LLP

600 13th Street, NW, Washington, DC 20005-3096
3. ☐ a. A check in the amount of \$_____ is enclosed to cover the reexamination fee, 37 CFR 1.20(c)(1);
- ☒ b. The Director is hereby authorized to charge the fee as set forth in 37 CFR 1.20(c)(1) of 2,520.00 to Deposit Account No. 500417 (submit duplicate of this form for fee processing); or
- ☐ c. Payment by credit card. Form PTO-2038 is attached.
4. ☒ Any refund should be made by ☐ check or ☒ credit to Deposit Account No. 500417 37 CFR 1.26(c). If payment is made by credit card, refund must be to credit card account.
5. ☒ A copy of the patent to be reexamined having a double column format on one side of a separate paper is enclosed. 37 CFR 1.510(b)(4)
6. ☐ CD-ROM or CD-R in duplicate, Computer Program (Appendix) or large table
7. ☐ Nucleotide and/or Amino Acid Sequence Submission
If applicable, all of the following are necessary.
 - a. ☐ Computer Readable Form (CRF)
 - b. Specification Sequence Listing on:
 - i. ☐ CD-ROM (2 copies) or CD-R (2 copies); or
 - ii. ☐ paper
 - c. ☐ Statements verifying identity of above copies
8. ☐ A copy of any disclaimer, certificate of correction or reexamination certificate issued in the patent is included.
9. ☒ Reexamination of claim(s) 13, 18-20, 22 and 33 is requested.
10. ☒ A copy of every patent or printed publication relied upon is submitted herewith including a listing thereof on Form PTO-1449 or equivalent.
11. ☒ An English language translation of all necessary and pertinent non-English language patents and/or printed publications is included.

06/23/2004 MTWITTY 88888882 588417 98887845

(Page 1 of 2)

This collection of information is required by 37 CFR 1.510. The information is required to obtain or retain a patent by the public (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Ex Parte Reexam, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

REEXAMINATION REQUEST FOR U.S. Patent No. 2,615,151

VI. CONCLUSION

A substantial new question of patentability of claims 13, 18-20, 22 and 33 is raised in view of:

- (i) the '698 Preissman Patent alone, or considered in view of the '188 Shepherd Patent;
- (ii) the '684 Creager Patent alone, or considered in view of the '188 Shepherd Patent; and/or
- (iii) the '805 Plante Patent alone, considered in view of the '188 Shepherd Patent.

The Requester respectfully submits that the '160 Colvin Patent be reexamined in view of the showing in this Request that a substantial new question of patentability is present.

Respectfully submitted,


Kenneth L. Cagle
Registration No. 26,151

McDermott, Will & Emery
600 13th Street, NW
Washington, D.C. 20005
(202) 756-8000
Date: June 16, 2004
Facsimile (202) 756-8087

CERTIFICATE OF SERVICE

I hereby certify that the attached papers (Associate Power Of Attorney and Change Of Correspondence Address) were served this day, June 16, 2004, on Robert E. Krebs, attorney of record for the Patent Owner, by causing a true copy of said papers to be deposited with the United States Post Office as First Class Mail in an envelope addressed to:

Robert E. Krebs
Thelen Reid & Priest LLP
P.O. Box 640640
San Jose, CA 95164-0640

10331-051301



Lawrence T. Cullen
McDERMOTT, WILL & EMERY
600 13th Street, N.W.
Washington, DC 20005-3096
Tel: (202) 756-8380

EXHIBIT AM

Greenberg Traurig

Todd S. Sharinn
212-501-2157

September 23, 2004

Quickie, LLC
c/o Rick, Steiner, Segal & Fell
Three New York Plaza
New York, New York 10004

Attn: Rick Steiner

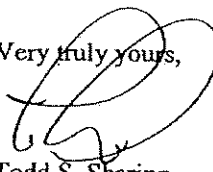
Re: Outstanding Statement
Client Number: 51822

Dear Rick:

Enclosed please find our outstanding statement of invoices as of October 7, 2004.
Thank you in advance for your assistance in processing these payments.

If you have any questions, please do not hesitate to contact the undersigned.

Very truly yours,


Todd S. Sharinn

Enclosure

ALBANY
AMSTERDAM
ATLANTA
BOCA RATON
BOSTON
CHICAGO
DALLAS
DENVER
FORT LAUDERDALE
LOS ANGELES
MIAMI
NEW JERSEY
NEW YORK
ORANGE COUNTY, CA
ORLANDO
PHILADELPHIA
PHOENIX
SILICON VALLEY
TALLAHASSEE
TYSONS CORNER
WASHINGTON, D.C.
WEST PALM BEACH
WILMINGTON
ZURICH

EXHIBIT

36

Wyz-610752451v01

Greenberg Traurig, LLP | Attorneys at Law | 885 Third Avenue | New York, NY 10022-4834 | Tel 212.801.2100 | Fax 212.688.2449

www.gtlaw.com

RS003187

Greenberg Traurig

Quickie, LLC
c/o Rick, Steiner, Segal & Fell
Three New York Plaza
New York, NY 10004

Attn: Rick Steiner

Outstanding invoices as of October 07, 2004

File Number	Titled	Invoice #	Dated	Billed thru	Invoice Balance Due
51822.010000	General				
		*999539	02/12/03	01/31/03	365.68
		*1022875	04/08/03	03/31/03	70.00
				Balance due this file	\$ 435.68
51822.010200	Concentric Passive Knotless Suture Terminator				
		*1129334	11/14/03	10/31/03	1,602.09
		*1157465	01/20/04	12/31/03	316.64
		1217480	05/14/04	04/30/04	835.05
				Balance due this file	\$ 2,753.78
51822.010400	Quickie LLC v. Medtronics				
		*930770	09/09/02	09/04/02	29,358.99
		*942637	10/04/02	09/30/02	2,603.72
		*961002	11/11/02	10/31/02	573.67
		*1042103	05/13/03	04/30/03	25.47
				Balance due this file	\$ 32,561.85
51822.010800	Surgical Drape Patent Application				
		*986683	01/14/03	12/31/02	3,578.30

Page 1

GREENBERG TRAUIG, LLP
MET LIFE BUILDING
200 PARK AVENUE, NEW YORK, NEW YORK 10166
212-801-9200 FAX 212-801-6400 www.gtaw.com
MIAMI NEW YORK WASHINGTON, D.C. ATLANTA PHILADELPHIA TYSONS CORNER SAO PAULO
FORT LAUDERDALE WEST PALM BEACH ORLANDO TALLAHASSEE BOCA RATON CHICAGO

RS003188

Greenberg Traurig

		*999540	02/12/03	01/31/03	400.90
			Balance due this file		\$ 3,979.20
51822.010900	Reexamination of U.S. Patent No. 6,066,160 by Medtronic				
		*986682	01/14/03	12/31/02	1,561.51
			Balance due this file		\$ 1,561.51
			Total client balance		\$ 41,292.02

HIL:AM

Page 2

GREENBERG TRAURIG, LLP
 MET LIFE BUILDING
 200 PARK AVENUE, NEW YORK, NEW YORK 10166
 212-801-9200 FAX 212-801-6400 www.gtdaw.com
 MIAMI NEW YORK WASHINGTON, D.C. ATLANTA PHILADELPHIA TYSONS CORNER SAO PAULO
 FORT LAUDERDALE WEST PALM BEACH ORLANDO TALLAHASSEE BOCA RATON CHICAGO

RS003189

EXHIBIT AN

Aug 15 2006 10:09AM HP LASERJET FAX

AUG-14-2006 16:53

SKGF

202 371 2540

P.43

P.3

34521

EXHIBIT

58

6/12/08

August 14, 2006

WRITER'S DIRECT NUMBER
(212) 221-7131
INTERNET ADDRESS
CMAA0047@CVMARKS.VLLADU

Vis Email

Andrew D. Ness, Esq.
Theles Reid & Priest LLP
701 8th Street, NW
Washington, D.C. 20001

Re: Transfer of Files

Dear Mr. Ness:

Responsibility for all matters relating to Quickis, LLC are to be transferred to STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C. Therefore, please forward all related files and future correspondence to the attention of Mark F. Evens at the address listed below:

Mark Fox Evens, Esq.
STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.
1100 New York Avenue, NW
Washington, DC 20005-3934
(202) 772-8888
mevens@skgf.com

If you have any questions or concerns please contact us. We appreciate your prompt reply to this request and we look forward to the transfer of the requested files.

Very truly yours,



Aubrey C. Galloway, M.D.
Managing Partner

144032_1.DOC

EXHIBIT AO



104—Summons without Notice, Blank Court,
Personal or Substituted Service, 8-88

1973 BY JULIUS B. BERG, INC.,
PUBLISHER, NYC 10013

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

QUICKIE, LLC,

Plaintiff

against

GREENBERG TRAUIG, LLC: THELEN, REID,
BROWN, RAYSMAN & STEINER, L.L.P. (FORMERLY
KNOWN AS THELEN, REID & PRIEST, LLP); AND
ROBERT E. KREBS, ESQ.,

Defendant

Index No. 105235/07

Plaintiff designates
New York

County as the place of trial

The basis of the venue is principal pla
of business of Plaintiff

**AMENDED
Summons**

Plaintiff's principal place of
business is c/o Rick, Steiner,
Segal & Fell, 3 New York Plaza
New York, NY 10004
County of New York

To the above named Defendant

You are hereby summoned to answer the complaint in this action and to serve a copy
of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's
Attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days
after the service is complete if this summons is not personally delivered to you within the State of New York); and in
case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the
complaint.

Dated, New York, New York

May 14, 2007

Defendant's address:

Greenberg Traurig, 200 Park Avenue, NY, NY 10166
Thelen Reid Brown Raysman & Steiner LLP,
875 Third Avenue, NY, NY 10022
Robert E. Krebs, c/o Thelen Reid, Brown Raysman
& Steiner LLP, 225 West Santa Clara Street, Suite
Suite 1200, San Jose, CA 95113

JANVEY, GORDON, HERLANDS, RANDOLPH
& COX, LLP

Attorney(s) for Plaintiff

Office and Post Office Address

355 Lexington Avenue, 10th Fl.
New York, New York 10017
(212) 986-1200

NEW YORK
COUNTY CLERK'S OFFICE

MAY 15 2007

NOT COMPARED
WITH COPY FILE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----x

QUICKIE, LLC,

: Index No. 105235/07

Plaintiff,

:

-against-

: AMENDED COMPLAINT

GREENBERG TRAURIG, LLC; THELEN REID
BROWN RAYSMAN & STEINER LLP (FORMERLY
KNOWN AS THELEN, REID & PRIEST, LLP); AND
ROBERT E. KREBS, ESQ.

:

:

:

Defendants.

:

-----x

Plaintiff, Quickie, LLC, by and through its attorneys, Janvey, Gordon, Herlands,
Randolph & Cox, LLP and Diamond, McCarthy, L.L.P., as and for its Amended Complaint,
alleges as follows:

SUMMARY OF CLAIMS

1. This is a legal malpractice action seeking to redress the harms caused by Greenberg Traurig, LLP ("Greenberg"), Robert E. Krebs, Esq. ("Krebs"), and the law firm in which Krebs currently serves as an equity partner, Thelen Reid Brown Raysman & Steiner LLP, formerly known as Thelen, Reid & Priest, L.L.P. ("Thelen" and, collectively with Greenberg and Krebs, "Defendants"). Quickie, LLC ("Quickie" or "Plaintiff") retained Defendants to provide legal expertise and advice concerning a valuable medical device patent held by Quickie.

2. Defendants' negligence and malpractice occurred when, despite their affirmative representations to the contrary, Defendants failed to notify Plaintiff before fees

were due to maintain the patent. Thelen and Krebs were further negligent and committed malpractice by seeking to amend Plaintiff's patent after it had expired and without reasonable inquiry to ensure that the patent was in force and amendable, thereby causing Plaintiff to miss an opportunity to reinstate the expired patent.

3. Defendants' conduct materially damaged Quickie – a company formed by leading cardiovascular surgeons and physicians – all of whom reasonably, justifiably and foreseeably relied on Defendants' representations and legal expertise to ensure that Quickie's patent rights were appropriately protected and pursued. Upon information and belief, Quickie has suffered more than \$10 million in actual and consequential damages a result of Defendant's wrongdoing.

PARTIES, JURISDICTION AND VENUE

4. Plaintiff Quickie, LLC is a limited liability company organized and existing under the laws of the State of New York, and having its principal place of business at Rick, Steiner, Segal & Fell, 3 New York Plaza, New York, New York, 10004, Attention Alan L. Fell, Esq.

5. Defendant Greenberg Traurig, LLP is a New York registered limited liability partnership with its principal place of business in the State of New York located at 200 Park Avenue, New York, New York 10166.

6. Defendant Thelen Reid Brown Raysman & Steiner LLP (formerly known as Thelen, Reid & Priest, L.L.P.) is a registered limited liability partnership with its principal place of business located at 875 Third Avenue, New York, New York, 10022. In 2006, Thelen, Reid & Priest, L.L.P. merged with Brown, Raysman, Millstein, Felder & Steiner, L.L.P., to form Thelen Reid Brown Raysman & Steiner LLP, named as Defendant herein.

Upon information and belief, Thelen assumed all of Thelen, Reid, & Priest, L.L.P.'s liabilities at issue in this action pursuant to that merger.

7. Defendant Robert E. Krebs, Esq. is a resident of the State of California and was, at all relevant times, an equity partner at Thelen who transacted business in New York State.

8. Quickie's claims arise under the laws of New York. Venue is proper under CPLR 503 because Plaintiff resides in New York County.

BACKGROUND

9. In the late 1990's, Quickie developed a device known as the "Passive Knotless Suture Terminator for Use in Minimally Invasive Surgery and to Facilitate Standard Tissue Securing" for use in open-heart surgeries (the "Quickie Device"). In 1998, Quickie retained Todd S. Sharinn, Esq. ("Sharinn"), a New York licensed attorney then-employed at the law firm Pepe & Hazard L.L.P. ("Pepe"), to file an application with the United States Patent and Trademark Office (the "PTO") seeking a patent covering the Quickie Device. In November 1998, Quickie signed a licensing and product development agreement with Medtronic, Inc. ("Medtronic"), and agreed to share confidential and proprietary information to assist Medtronic's evaluation of the Quickie Device. Medtronic ultimately declared that it was not interested in licensing the Quickie Device, and that it was terminating the license and product development agreement.

10. On May 23, 2000, the PTO issued U.S. Patent No. 6,066,160 covering the Quickie Device (the "160 Patent"). On May 30, 2000, Sharinn, while he was still employed by Pepe, wrote to Quickie to inform it that the PTO had issued the 160 Patent, and that he "will notify [Quickie] regarding payment of the maintenance fees several months before they are

due.” Shortly thereafter, Sharinn joined Greenberg’s New York City office. The Quickie engagement was transferred to Greenberg, and Greenberg thereby assumed and became bound by Sharinn’s promise and representation to notify Quickie several months before the maintenance fees were due.

11. Shortly thereafter, Medtronic began marketing a device that was virtually identical to the Quickie Device, thus infringing on the 160 Patent. Upon discovering Medtronic’s infringement, Plaintiff retained Greenberg to pursue infringement claims against Medtronic in the United States District Court for the Southern District of New York, Civil Action No. 02 Civ. 1157 (the “Medtronic Litigation”). On July 3, 2002, Quickie and Thelen executed a written engagement agreement whereby Quickie retained Thelen to replace Greenberg as lead litigation counsel in the Medtronic Litigation, while Greenberg continued to counsel Plaintiff in connection with proceedings before the PTO.

12. On October 22, 2002, Greenberg, by and through Sharinn, completed an official PTO form entitled “Fee Address Indication Form” specifying that all PTO correspondence related to maintenance fees for the 160 Patent should be sent to Sharinn at Greenberg’s offices in New York City. Sharinn mailed the Fee Address Indication Form to the PTO on October 22, 2002, and faxed it to the PTO on December 16, 2002, using Greenberg stationary.

13. On November 25, 2002, Medtronic commenced reexamination proceedings before the PTO, seeking to redefine the 160 Patent in a manner that would arguably moot the Medtronic Litigation (the “Reexamination”). Thereafter, Quickie retained Thelen and Krebs (collectively, “Thelen/Krebs”) to transact all post-issuance business before the PTO related to the 160 Patent.

14. Specifically, on March 4, 2003, Thelen/Krebs prepared, and Quickie signed, a general power of attorney (the "Thelen Power of Attorney") revoking all prior powers of attorney and designating Krebs as the lead attorney to prosecute and transact all business in the PTO concerning the 160 Patent application. Krebs and other Thelen attorneys working under Krebs's direction and supervision had regular contact with PTO representatives concerning all aspects of the 160 Patent including, but not limited to, construction and enforcement of the 160 Patent.

15. In December 2003, Thelen/Krebs prepared, and Quickie approved, a second PTO filing stating that all PTO communications concerning the 160 Patent should be sent directly to Krebs (the "Thelen Address Notice"). Plaintiff reasonably understood from the Thelen Address Notice that Thelen/Krebs would be responsible for handling all written and oral communications with the PTO concerning the 160 Patent. Plaintiff now has reason to believe, however, that Thelen/Krebs did not file a "Fee Address Indication Form" to inform the PTO that correspondence related to maintenance fees on the 160 Patent should be sent to their attention. Moreover, upon further information and belief, Quickie now understands that neither Greenberg nor Sharinn notified the PTO that they were no longer the designated recipient of all PTO communications concerning payment of maintenance fees on the 160 Patent.

16. Plaintiff's decision to rely upon Defendants to handle all PTO matters concerning the 160 Patent was based, in part, on Defendants' representation that they were each highly competent in practicing before the PTO, that they were well-versed in PTO regulations and procedures, and that they would competently and aggressively prosecute and protect the 160 Patent. For example, Greenberg's website states that its patent capabilities:

run the gamut from application preparation and filing to examination and appeal processes to maximizing technology

transfer opportunities – as well as handling patent litigation, when necessary. Through our experience working with a wide range of clients, we have developed a structured process for obtaining patent claims that provides strategic flexibility for our clients to best achieve their business goals.

Sharinn's biography similarly reports that he is admitted to practice before the PTO and has "over fourteen years of legal experience in the worldwide acquisition, exploitation and aggressive enforcement of intellectual property rights."

17. Thelen's and Krebs' experience in representing patent owners before the PTO is likewise widely reported in their marketing materials. For example, Thelen's web site states that its patent group:

[c]ounsels clients in all aspects of acquiring, perfecting, and protecting the client's interests in its patents and other intellectual property, including . . . representation in reexamination, reissues, oppositions, interferences, protests, and appeals.

Thelen's website also states that Krebs has over 30 years of patent prosecution experience, focusing on representing patent owners in the prosecution and protection of patents before the PTO. Thelen appointed Krebs co-chair of its intellectual property and trade regulation group, and reported in its publications that Krebs was named in 2005 as one of the top 30 IP lawyers in the United States. Krebs states in the fall 2005 edition of Thelen's Intellectual Property and Trade Regulation Journal that his prior work as in-house general counsel allows him to "see issues and problems through the eyes of my clients . . . I've sat in their chair and I've stood in their shoes, and that's my perspective on their problems."

18. Pursuant to 37 C.F.R. §1.362(e)(1), the window for payment of maintenance fees on the 160 Patent opened on May 23, 2003, and closed one year later on May 23, 2004. During the entire period between May 23, 2003 to May 23, 2004, Greenberg was on record at the PTO as the designated recipient of all communications related to maintenance fees

on the 160 Patent. Moreover, Greenberg, by hiring Sharinn, adopted Sharinn's express representation that they would notify Quickie several months before the maintenance fees were due. Nevertheless, Greenberg never forwarded the PTO's reminder notices concerning maintenance fees on the 160 Patent, nor did it notify Quickie shortly before maintenance fees were due.

19. On May 23, 2004, Thelen/Krebs held Quickie's general power of attorney, and Thelen/Krebs had previously represented to Quickie that they would receive all PTO correspondence concerning the 160 Patent. Nevertheless, Thelen/Krebs did not pay the maintenance fees when they were due on May 23, 2004, nor did they timely notify or advise Quickie that the maintenance fees were due. Accordingly, pursuant to PTO regulations, the 160 Patent expired on May 24, 2004, and the two year period to reinstate the 160 Patent pursuant to 37 C.F.R. § 1.378(c) (the "Reinstatement Period") expired on May 24, 2006.

20. In June 2004, a second reexamination proceeding concerning the 160 Patent was commenced in the PTO (the "Second Reexamination"), and Quickie further retained Thelen/Krebs to serve as lead counsel in connection therewith. In December 2004, the PTO merged the Reexamination and the Second Reexamination (collectively, the "Reexamination Proceedings").

21. In January and June 2005, Thelen/Krebs filed written amendments to the 160 Patent (the "Amendments") wherein they represented that the 160 Patent claims were pending and able to be substantively amended. PTO regulations required Thelen/Krebs to make a reasonable inquiry to gather supporting evidence prior to making those representations. *See* 37 C.F.R. § 10.18(b)(2)(iii) (2007). Upon information and belief, Thelen/Krebs made no such inquiry prior to filing the Amendments with the PTO and sending them to Plaintiff.

22. In fact, the 160 Patent had expired months earlier, and PTO regulations prohibited entry of the amendments Thelen/Krebs sought. *See* 37 C.F.R. §1.530(j) (2007). Had Thelen and Krebs inquired about the status of the 160 Patent before making those representations and filing the Amendments, they would have discovered the maintenance fees had not been paid during the Reinstatement Period. In failing to inquire as to the 160 Patent's status prior to filing the Amendments, Thelen and Krebs violated PTO regulations that required such an inquiry and that prohibited all efforts to make substantive amendments to expired patents. Moreover, in affirmatively representing that the 160 Patent was pending and able to be substantively amended at a time when it had in fact expired, Thelen/Krebs misled Quickie into believing that the 160 Patent was still in force.

23. While the Reexamination Proceedings continued before the PTO, the court hearing the Medtronic Litigation issued multiple continuances and delayed the trial setting several times. When it became clear that the Reexamination Proceedings would not be resolved quickly, the court dismissed the Medtronic Litigation without prejudice pursuant to a stipulation agreed to by Quickie and Medtronic and providing that, pending resolution of the Reexamination Proceedings, the Medtronic Litigation would be dismissed without prejudice, all statutes of limitation would be tolled, and any revived litigation would be filed in the same court.

24. In July, 2006, Quickie learned for the very first time that the 160 Patent had expired when a medical device company withdrew from ongoing negotiations to license the Quickie Device. Shortly thereafter, the Reexamination Proceedings were terminated, and the PTO issued a determination that the 160 Patent was no longer valid.

CAUSES OF ACTION

25. Plaintiff pleads all causes of action in the alternative, and no factual or legal assertion in connection with one cause of action is intended to be or shall be construed as an admission with respect to any other cause of action.

FIRST CAUSE OF ACTION

(Negligence/Legal Malpractice against Greenberg Traurig, LLC)

26. Plaintiff repeats and realleges paragraphs 1 through 25 and incorporates them by reference.

27. At all relevant times, an attorney-client relationship existed between Greenberg and Plaintiff with respect to the preservation of Plaintiff's ownership interests in the 160 Patent. In so representing Plaintiff, Sharinn was at all relevant times acting within the course and scope of his employment with Greenberg. Pursuant to the attorney-client relationship, Greenberg owed Plaintiff a duty to exercise the reasonable skill, care and knowledge expected of the legal profession, including, but not limited to, a duty to monitor and inform Quickie of deadlines to pay PTO maintenance fees on the 160 Patent.

28. In breach of its duties to Plaintiff, Greenberg failed to exercise the reasonable skill, care and knowledge expected of the legal profession. Specifically, upon information and belief, Greenberg failed to establish an effective calendaring system to monitor the deadlines for maintenance payments on the 160 Patent, failed to notify Quickie that said maintenance fees could have been paid at any time between May 23, 2003 and May 23, 2004, and failed to forward PTO reminder notices for payment of maintenance fees on the 160 Patent in violation of 37 C.F.R. § 10.23(c)(8) (2007).

29. Upon information and belief, Greenberg's breaches of the duties owed to Plaintiff caused Plaintiff to suffer serious economic damages in excess of \$10 million that

continue through the present, including, but not limited to: (1) loss of Plaintiff's ability to recover infringement damages from Medtronic upon conclusion of the Medtronic Litigation; (2) attorneys' fees and expenses incurred in pursuit of the Medtronic Litigation; (3) lost royalties Quickie would have earned from licensing the 160 Patent; and (4) attorneys' fees and expenses incurred to remedy Defendant's malpractice and negligence.

30. Upon information and belief, but for Greenberg's negligence, the maintenance fees for the 160 Patent would have been paid when they were due, the 160 Patent would be viable today, the Medtronic Litigation would have resulted in a judgment awarding Plaintiff damages as a result of Medtronic's infringement of the 160 Patent, and Plaintiff would have licensed the Quickie Device to third parties. All conditions precedent to Plaintiff's recovery on this cause of action have occurred or have been satisfied.

31. By reason of the foregoing, Greenberg is liable to Plaintiff.

SECOND CAUSE OF ACTION

(Negligent Misrepresentation against Greenberg Traurig, LLC)

32. Plaintiff repeats and realleges paragraphs 1 through 25 and incorporates them by reference.

33. At all relevant times, an attorney-client relationship existed between Greenberg and Plaintiff with respect to preservation of Plaintiffs' ownership of the 160 Patent. As part of that relationship, Sharinn represented to Plaintiff that he would provide notice several months before maintenance fees were due to be paid on the 160 Patent. In hiring Sharinn and notifying the PTO that all PTO correspondence concerning payment of maintenance fees on the 160 Patent was to be sent to Greenberg's offices, Greenberg adopted Sharinn's representations to Quickie. Further, as part of the attorney-client relationship between Greenberg and Plaintiff, Greenberg represented that it was highly competent in

practicing before the PTO, that it was well-versed in PTO regulations and procedures, and that it would prosecute and protect the 160 Patent.

34. Greenberg intended that Quickie rely, or should have reasonably foreseen that Quickie would so rely, on the above-referenced representations. Nevertheless, upon information and belief, Greenberg did not establish reliable calendaring systems to ensure that the promised notice would be provided, and it therefore did not have any reasonable basis for believing the promised notice would be provided to Quickie.

35. Quickie reasonably and foreseeably relied on Greenberg's negligent misrepresentations. Had Quickie known that Greenberg did not establish reliable calendaring systems for monitoring the deadlines for payment of maintenance fees on the 160 Patent, Quickie would not have authorized Greenberg to designate itself as the recipients of all PTO correspondence concerning such maintenance fees, nor would Quickie have relied upon Greenberg's promise to provide notice before the maintenance fees were due.

36. Upon information and belief, as a proximate result of its reliance on Greenberg's negligent misrepresentations, Plaintiff suffered serious economic damages in excess of \$10 million that continue to the present including, but not limited to: (1) loss of Plaintiff's ability to recover infringement damages from Medtronic upon conclusion of the Medtronic Litigation; (2) attorneys' fees and expenses in pursuit of the Medtronic Litigation; (3) lost royalties Quickie would have earned from licensing the 160 Patent; and (4) attorneys' fees and expenses incurred to remedy Greenberg's negligence and malpractice. All conditions precedent to Plaintiff's recovery on this cause of action have occurred or have been satisfied.

37. By reason of the foregoing, Greenberg is liable to Plaintiff.

THIRD CAUSE OF ACTION

(Negligence/Legal Malpractice against Thelen Reid Brown
Raysman & Steiner LLP and Robert E. Krebs, Esq.)

38. Plaintiff repeats and realleges paragraphs 1 through 25 and incorporates them by reference.

39. Beginning on July 2, 2002 and continuing to August 14, 2006, an attorney-client relationship existed between Thelen/Krebs and Plaintiff with respect to the prosecution and transaction of all business in the United States Patent and Trademark Office concerning the 160 Patent. In so representing Plaintiff, Krebs was at all relevant times acting within the course and scope of his employment and partnership with Thelen. Pursuant to the attorney-client relationship between Thelen/Krebs and Plaintiff, Thelen/Krebs owed Plaintiff a duty to exercise the reasonable skill, care and knowledge expected of a member of the legal profession, including, but not limited to, a duty to monitor and inform Quickie of deadlines to pay PTO maintenance fees on the 160 Patent.

40. In breach of their duties to Plaintiff, Thelen/Krebs failed to exercise the reasonable skill, care and knowledge expected of a member of the legal profession. Specifically, Thelen/Krebs failed to establish an effective calendaring system to monitor the deadlines for maintenance payments on the 160 Patent, failed to notify Quickie that said maintenance fees were due on May 23, 2004, and failed to pay such maintenance fees when they were due.

41. Upon information and belief, Thelen/Krebs' breaches of the duties they owed to Plaintiff caused Plaintiff to suffer serious economic damages in excess of \$10 million that continue through the present including, but not limited to: (1) loss of Plaintiff's ability to recover infringement damages from Medtronic upon conclusion of the Medtronic Litigation; (2) attorneys' fees and expenses incurred in pursuit of the Medtronic Litigation; (3) lost

royalties Quickie would have earned from licensing the 160 Patent; and (4) additional attorneys' fees and expenses incurred to remedy Defendants' malpractice and negligence.

42. Upon information and belief, but for Thelen/Krebs' malpractice and negligence, the maintenance fees for the 160 Patent maintenance would have been paid when they were due, the 160 Patent would be viable today, the Medtronic Litigation would have resulted in a judgment awarding Plaintiff damages as a result of Medtronic's infringement of the 160 Patent, and Plaintiff would have licensed the Quickie Device other interested parties. All conditions precedent to Plaintiff's recovery on this cause of action have occurred or have been satisfied.

43. By reason of the foregoing, Thelen/Krebs are liable to Plaintiff.

FOURTH CAUSE OF ACTION

(Negligence/Legal Malpractice against Thelen Reid Brown
Raysman & Steiner LLP and Robert E. Krebs, Esq.)

44. Plaintiff repeats and realleges paragraphs 1 through 25 and incorporates them by reference.

45. Beginning on July 2, 2002 and continuing to August 14, 2006, an attorney-client relationship existed between Thelen/Krebs and Plaintiff with respect to the prosecution and transaction of all business in the United States Patent and Trademark Office concerning the 160 Patent. In so representing Plaintiff, Krebs was at all relevant times acting within the course and scope of his employment and partnership with Thelen. Pursuant to the attorney-client relationship between Thelen/Krebs and Plaintiff, Thelen/Krebs owed Plaintiff a duty to exercise the reasonable skill, care and knowledge expected of a member of the legal profession, including, but not limited to, a duty to competently, appropriately, and honestly represent Quickie in all aspects of the Reexamination Proceedings before the PTO.

46. In breach of their duties, Thelen/Krebs failed to exercise the reasonable skill, care and knowledge expected of a member of the legal profession. Specifically, Thelen/Krebs failed to exercise the reasonable skill, care and knowledge expected of a member of the legal profession by prosecuting the Reexamination Proceedings concerning the 160 Patent, and filing the Amendments seeking to substantively amend the 160 Patent, without first making a reasonable inquiry as to the status of the 160 Patent as required by 37 C.F.R. § 10.18(b)(2)(iii) (2007). Thelen/Krebs further failed to exercise the reasonable skill, care and knowledge expected of a member of the legal profession when they represented to the PTO and Plaintiff that the 160 Patent claims were pending and capable of substantive amendment when, in fact, they had already expired and PTO regulations specifically forbid entry of the amendments Thelen/Krebs sought. *See* 37 C.F.R. § 1.530(j) (2007).

47. Upon information and belief, Thelen/Krebs' breaches of the duties owed Plaintiff caused Plaintiff to suffer serious economic damage in excess of \$10 million that continue to today including, but not limited to: (1) loss of Plaintiff's ability to recover infringement damages from Medtronic upon conclusion of the Medtronic Litigation; (2) attorneys' fees and expenses incurred in pursuit of the Medtronic Litigation; (3) lost royalties Quickie would have earned from licensing the 160 Patent to third parties; and (4) attorneys' fees and expenses incurred to remedy Defendants' malpractice and negligence.

48. Upon information and belief, but for Thelen/Krebs' malpractice and negligence, Quickie would have discovered and reinstated the 160 Patent's expiration during the Reinstatement Period, the Medtronic Litigation would have resulted in a judgment awarding Plaintiff damages as a result of Medtronic's infringement of the 160 Patent, and

Plaintiff would have licensed the Quickie Device to other interested parties. All conditions precedent to Plaintiff's recovery on this cause of action have occurred or have been satisfied.

49. By reason of the foregoing, Thelen/Krebs are liable to Plaintiff.

FIFTH CAUSE OF ACTION

(Negligent Misrepresentation against Thelen Reid Brown
Raysman & Steiner LLP and Robert E. Krebs, Esq.)

50. Plaintiff repeats and realleges paragraphs 1 through 25 and incorporates them by reference.

51. Beginning on July 2, 2002 and continuing to August 14, 2006, an attorney-client relationship existed between Thelen/Krebs and Quickie. As part of that relationship, Thelen/Krebs represented to Quickie that they would prosecute and transact all business before the PTO concerning the 160 Patent application. Further, as part of that attorney-client relationship Thelen/Krebs represented to Quickie that they were highly competent in practicing before the PTO, that they were well-versed in PTO regulations and procedures, and that they would competently and aggressively prosecute and protect the 160 Patent. Thelen/Krebs further represented to Quickie and the PTO that the 160 Patent claims were pending and capable of substantive amendment when the Amendments were filed in January and June 2005. At all times relevant to these allegations, Krebs was acting within the course and scope of his employment and partnership with Thelen.

52. In making the above-references representations, Thelen/Krebs intended that Quickie rely, or should have reasonably foreseen that Quickie would so rely, on said representations. Nevertheless, Thelen/Krebs did not establish a reliable calendaring system to ensure that the maintenance fees on the 160 Patent would be paid, nor did Thelen/Krebs have any reasonable basis for believing that they would monitor the due date for such fees and

provide Quickie reasonable notice before the fees were due. Moreover, Thelen/Krebs made no inquiry reasonable under the circumstances to confirm their representations to Plaintiff that the 160 Patent claims were pending and capable of substantive amendment in January and June 2005.

53. Quickie reasonably and foreseeably relied on Thelen/Krebs' negligent misrepresentations. Had Quickie known that Thelen/Krebs had not established a reliable calendaring system for monitoring the deadlines for payment of maintenance fees on the 160 Patent, Quickie would not have given Thelen/Krebs a general power of attorney to prosecute and transact all business before the PTO concerning the 160 Patent application, nor would Quickie have looked to Thelen/Krebs to ensure that the maintenance fees were timely paid. Moreover, had Quickie known that Thelen/Krebs made no inquiry reasonable under the circumstances to confirm that the 160 Patent was pending and capable of substantive amendment when the Amendments were filed, Quickie would not have allowed Thelen/Krebs to file the Amendments on Quickie's behalf.

54. Upon information and belief, as a proximate result of its reliance on Thelen/Krebs' negligent misrepresentations, Plaintiff has suffered serious economic damages in excess of \$10 million that continue to today including, but not limited to: (1) loss of Plaintiff's ability to recover infringement damages from Medtronic upon conclusion of the Medtronic Litigation; (2) attorneys' fees and expenses incurred in pursuit of the Medtronic Litigation; (3) lost royalties Quickie would have earned from licensing the 160 Patent to third parties; and (4) attorneys' fees and expenses incurred to remedy Thelen/Krebs' malpractice and negligence.

55. Upon information and belief, but for Thelen/Krebs' negligent misrepresentations, Quickie would not have relied on Thelen/Krebs to prosecute and transact

all business before the PTO concerning the 160 Patent, the 160 Patent would be viable today, the Medtronic Litigation would have resulted in a judgment awarding Plaintiff damages as a result of Medtronic's infringement of the 160 Patent, and Plaintiff would have licensed the Quickie Device to other interested parties. All conditions precedent to Plaintiff's recovery on this cause of action have occurred or have been satisfied.

56. By reason of the foregoing, Thelen/Krebs are liable to Plaintiff.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Quickie, LLC requests that this Court grant it judgment against Defendants and award it:

1. Actual, consequential, statutory, and exemplary damages and attorneys' fees, as permitted by law, with interest thereon; and
2. Such other and further relief to which Plaintiff is entitled.

Dated: New York, New York
May 15, 2007

Respectfully submitted,

JANVEY, GORDON, HERLANDS, RANDOLPH
& COX, LLP
Attorneys for Plaintiff

By: 

Richard I. Janvey (RJ1160)

Joan M. Secofsky (JS4053)

A Member of the Firm
355 Lexington Avenue
New York, New York 10017
(212) 986-1200

DIAMOND McCARTHY, LLP
Of Counsel
Two Houston Center
909 Fannin, Suite 1500
Houston, Texas 77010
(713) 333-5100

EXHIBIT AP

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
QUICKIE, LLC,

Plaintiff,

Index No. 10523/07

- against -

GREENBERG TRAUIG, LLP, THELEN REID
BROWN RAYSMAN & STEINER LLP (FORMERLY
KNOWN AS THELEN, REID & PRIEST LLP); AND
ROBERT E. KREBS, ESQ.,

Defendants.

-----X
THELEN REID BROWN RAYSMAN & STEINER
LLP and ROBERT E. KREBS,

Third-Party Plaintiffs,

-against-

TODD SHARINN, PEPE & HAZARD LLP,
ALAN FELL and RICK, STEINER, FELL &
BENOWITZ, LLP,

Third-Party Defendants.

-----X
**AMENDED ANSWER AND CROSS-CLAIMS
OF GREENBERG TRAUIG LLP**

Defendant Greenberg Traurig, LLP ["GT"] responds to the Amended Complaint of plaintiff Quickie, LLC ["Quickie"] and cross-claims against Thelen Reid Brown Raysman & Steiner LLP and Robert E. Krebs [collectively "the Thelen Defendants"], and against Rick, Steiner, Fell & Benowitz, LLP and Alan Fell [collectively "the Rick Steiner Defendants"] as follows:

1. Denies paragraph 1 insofar as it relates to GT, except admits that Quickie retained GT for a period of time; further admits on information and belief that Quickie thereafter replaced

GT and retained defendants Thelen Reid Brown Raysman & Steiner LLP (as successor to Thelen Reid & Priest LLP) and Robert E. Krebs, Esq. [collectively "the Thelen Defendants"]; and denies knowledge and information sufficient to respond as to the Thelen Defendants.

2. Denies paragraphs 2 and 3 insofar as they relate to GT; and denies knowledge and information sufficient to respond as to other persons or entities.

3. Admits on information and belief paragraph 4.

4. Denies paragraphs 5, except admits that GT is a limited liability partnership engaged in the practice of law in New York, with an office at 200 Park Avenue, New York, New York.

5. Denies knowledge and information sufficient to respond to paragraphs 6 and 7, except admit on information and belief that the Thelen Defendants were attorneys for Quickie and practiced law in New York, New York.

6. Denies knowledge and information sufficient to respond to paragraph 8, except admits that venue is proper in New York County.

7. Denies knowledge and information sufficient to respond to paragraph 9, except admits on information and belief that Quickie contends it developed the device described therein ["the Quickie Device"], that Quickie (at some point prior to engaging GT) engaged another law firm in which Todd Sharrin was an attorney, that Quickie filed an application with the U.S. Patent & Trademark Office ["the PTO"] on the Quickie Device, and that Quickie had discussions with Medtronic, Inc. ["Medtronic"] about the Quickie Device.

8. Denies paragraph 10, except admits that Quickie was issued U.S. Patent No. 6,066,160 ["the '160 Patent"] on the Quickie Device in about 2000, and that Sharinn joined GT sometime after the '160 Patent was issued; refers to the alleged correspondence and

communications referred to in that paragraph for their contents; and declines to respond to matters of law.

9. Denies knowledge and information sufficient to respond to paragraph 11; except admits that Quickie sued Medtronic with respect to '160 Patent in the United States District Court for the Southern District of New York ["the Medtronic Litigation"], and that GT represented Quickie in the Medtronic Litigation for a period of time; and admits on information and belief that Quickie signed an engagement letter with the Thelen Defendants, and that the Thelen Defendants replaced GT as counsel in the Medtronic Litigation no later than the summer of 2002.

10. Denies paragraph 12 insofar as it relates to GT, except admits that Sharinn was employed by GT at its New York City office for a period of time, and that Sharinn filed a Fee Address Indication Form ["the FAI Form"] with the PTO; and refers to that form for its contents.

11. Denies knowledge and information sufficient to respond to paragraph 13, except admits on information and belief that the Thelen Defendants were engaged to transact all business before the PTO concerning the '160 Patent beginning no later than early March 2003.

12. Denies knowledge and information sufficient to respond to paragraph 14, except admits on information and belief that, on or about March 4, 2003, plaintiff executed a form or forms revoking its prior powers of attorney and giving the Thelen Defendants a general power of new attorney to prosecute and transact all business in the PTO concerning the '160 Patent, and that thereafter the Thelen Defendants had contact with the PTO on behalf of Quickie regarding the '160 Patent.

13. Denies paragraph 15, except admits that GT did not act for Quickie concerning the '160 Patent after GT was replaced as Quickie's counsel with respect to that patent; and admits on information and belief that the Thelen Defendants filed a form or forms (including a "Change of Attorney Docket Number and Change of Address Notice ["the Change Form"]") with the PTO in December 2003, directing that all further communications with respect to the '160 Patent be sent to the Thelen Defendants; and denies knowledge and information sufficient to respond to the balance of that paragraph.

14. Denies paragraph 16 insofar as it relates to GT, except admits that GT has a website and that its website states certain things about GT's law practice as to patents, and refers to the website for its contents; and denies knowledge and information sufficient to respond to the balance of that paragraph.

15. Denies knowledge and information sufficient to respond to paragraph 17, except admits on information and belief that the Thelen law firm has a website, and refers to that website for its contents.

16. Denies paragraph 18, except admits that, during some part of 2003, the Thelen Defendants had not yet filed their Change Form; and declines to respond to matters of law.

17. Denies knowledge and information sufficient to respond to paragraph 19, except admits on information and belief that the Thelen Defendants held Quickie's general power of attorney after at least March 2003; and declines to respond to matters of law.

18. Denies knowledge and information sufficient to respond paragraph 20.

19. Denies knowledge and information sufficient to respond to paragraphs 21 and 22, except declines to respond to matters of law.

20. Denies knowledge and information sufficient to respond to paragraphs 23 and 24, except admits on information and belief that there were continuances of the Medtronic Litigation and that the Medtronic Litigation was transferred to the Court's Suspense Docket.

21. Denies paragraph 25, except admits that Quickie alleges what is in that paragraph.

22. Repeats its responses to paragraphs 1 through 25.

23. Denies paragraphs 27, except admits that an attorney-client relationship with respect to the '160 Patent existed between Quickie and GT for a period of time ending no later than March 2003, that Sharinn was an attorney at GT during that period; and declines to respond to matters of law.

24. Denies paragraphs 28, 29, 30, and 31.

25. Repeats its responses to paragraphs 1 through 25.

26. Denies paragraphs 33, except admits that an attorney-client relationship with respect to the '160 Patent existed between Quickie and GT for a period of time ending no later than March 2003, that Sharinn was an attorney at GT during that period; and declines to respond to matters of law.

27. Denies paragraphs 34, 35, 36, and 37.

28. Repeats its responses to paragraphs 1 through 25.

29. Denies knowledge and information sufficient to respond to paragraph 39, except admits on information and belief that an attorney-client relationship with respect to the '160 Patent existed between Quickie and the Thelen Defendants for a period of time commencing no later than July 2002.

30. Denies knowledge and information sufficient to respond to paragraphs 40, 41, 42, and 43.

31. Repeats its responses to paragraphs 1 through 25.

32. Denies knowledge and information sufficient to respond to paragraph 45, except admits on information and belief that an attorney-client relationship with respect to the '160 Patent existed between Quickie and the Thelen Defendants for a period of time commencing no later than July 2002.

33. Denies knowledge and information sufficient to respond to paragraphs 46, 47, 48, and 49.

34. Repeats its responses to paragraphs 1 through 25.

35. Denies knowledge and information sufficient to respond to paragraph 51, except admits on information and belief that an attorney-client relationship with respect to the '160 Patent existed between Quickie and the Thelen Defendants for a period of time commencing no later than July 2002.

36. Denies knowledge and information sufficient to respond to paragraphs 52, 53, 54, 55 and 56.

FIRST AFFIRMATIVE DEFENSE

37. The Amended Complaint fails to state a cause of action against GT.

SECOND AFFIRMATIVE DEFENSE

38. Quickie's claims are barred by the statute of limitations.

THIRD AFFIRMATIVE DEFENSE

39. Quickie terminated its engagement of GT no later than March 4, 2003; and Quickie revoked all powers of attorney given to GT regarding the '160 Patent. After that, GT owed no duty to Quickie. Thus, GT did not owe a duty to Quickie with respect to the maintenance fees for the '160 Patent which became initially due on May 23, 2003.

FOURTH AFFIRMATIVE DEFENSE

40. Quickie terminated its engagement of GT and revoked all powers of attorney given to GT regarding the '160 Patent no later than March 4, 2003. After that, GT did not have authority to act for Quickie. Thus, GT had no authority to act for Quickie vis-à-vis the '160 Patent when the maintenance fees for the '160 Patent became initially due on May 23, 2003.

FIFTH AFFIRMATIVE DEFENSE

41. Any damages suffered by Quickie as a result of the alleged failure to pay maintenance fees and the alleged expiration of the '160 Patent, or otherwise due to the events alleged in the Complaint, were caused by others besides GT and not proximately caused by GT, including (without limitation) the conduct of other professionals or other persons besides GT.

SIXTH AFFIRMATIVE DEFENSE

42. The Thelen Defendants had already succeeded GT as counsel for Quickie with respect to the '160 Patent before the maintenance fees for the '160 Patent became due on May 23, 2003 and before the deadline for payment of those fees. Quickie had ample and full opportunity to pay those fees after GT ceased to represent Quickie and before the '160 Patent allegedly expired; but the Thelen Defendants failed to advise and properly represent Quickie with respect to that matter. Thus, the conduct (including action and inaction) of the Thelen Defendants concerning the '160 Patent (including, without limitation, as to the maintenance fees due thereon) was the direct, superseding an/or intervening cause, or a contributing cause, of any damages which Quickie claims it suffered and it may have suffered as alleged in this action.

SEVENTH AFFIRMATIVE DEFENSE

43. The Thelen Defendants had already succeeded GT as counsel for Quickie in the PTO and in the Medtronic Litigation before the maintenance fees for the '160

Patent became due on May 23, 2003 and before the deadline for payment of those fees. In that capacity, the Thelen Defendants had further opportunities to know of and to assure payment (and cure non-payment) of the maintenance fees and thus keep the '160 Patent extant. Thus, the conduct (including action and inaction) of the Thelen Defendants concerning the '160 Patent (including, without limitation, as to the maintenance fees due thereon) was the direct, superseding and/or intervening cause, or a contributing cause, of any damages which Quickie claims to have suffered (as alleged in the Amended Complaint).

EIGHTH AFFIRMATIVE DEFENSE

44. Quickie has submitted statements, some under oath, to the PTO that, during the relevant period, the Thelen Defendants were responsible for the '160 Patent, including the timely payment of any maintenance fees due for that patent. Quickie is therefore estopped and otherwise barred from contending that GT had that responsibility and that GT caused or is liable for the damages Quickie claims to have suffered (as alleged in the Amended Complaint).

NINTH AFFIRMATIVE DEFENSE

45. The Rick Steiner Defendants were outside general counsel for Quickie throughout the period that GT acted as counsel for Quickie, and, as such, they advised Quickie with respect to the '160 Patent before the maintenance fees for the '160 Patent became due on May 23, 2003 and before the deadline for payment of those fees. Quickie had ample and full opportunity to pay those fees after GT ceased to represent Quickie and before the '160 Patent allegedly expired; but the Rick Steiner Defendants failed to advise and properly represent Quickie with respect to that matter. Thus, the conduct (including action and inaction) of the Rick Steiner Defendants concerning the '160 Patent (including, without limitation, as to the maintenance fees due

thereon) was the direct, superseding and/or intervening cause, or a contributing cause, of any damages which Quickie claims it suffered and it may have suffered as alleged in this action.

TENTH AFFIRMATIVE DEFENSE

46. Quickie was negligent or contributorily negligent in failing to assure that the maintenance fees were paid and the '160 Patent remained extant. Quickie knew of the obligation to pay maintenance fees; and Quickie had ample and full opportunity to pay the maintenance fees due on the '160 Patent before and after GT ceased to represent Quickie and before the '160 Patent allegedly expired. Thus, Quickie's conduct (including action and inaction) concerning the '160 Patent (including, without limitation, the maintenance fees due thereon) was the direct, superseding and/or intervening cause, or a contributing cause, of any damages which Quickie claims it suffered or may have suffered as alleged in this action.

ELEVENTH AFFIRMATIVE DEFENSE

47. Quickie's own conduct, whether negligent or not, was the proximate cause of any damages it suffered or may have suffered as alleged in this action.

TWELFTH AFFIRMATIVE DEFENSE

48. GT did not adopt any statements by Sharinn allegedly made while he was previously employed at another law firm; and, in particular, GT did not adopt Sharinn's alleged statement that he would provide notice to Quickie several months before maintenance fees were due on the '160 Patent. Any such statements, if made, were not made by or on behalf of GT, and (if made) were made at a time when there was no contractual, fiduciary or other special relationship between GT and Quickie. Thus, there is no basis for the negligent misrepresentation cause of action (Second Cause of Action) against GT.

THIRTEENTH AFFIRMATIVE DEFENSE

49. The negligent misrepresentation claim (Second Cause of Action) is duplicative of the malpractice claim, and is therefore barred.

FOURTEENTH AFFIRMATIVE DEFENSE

50. GT acted vis-à-vis Quickie at all times in good faith, with due diligence and reasonably as to the '160 Patent, consistent with the conduct of reasonable skill, care and knowledge of a patent counsel, sufficiently fulfilling any duties it may have had to Quickie.

FIFTH AFFIRMATIVE DEFENSE

51. The damages sought by Quickie are speculative, and not ascertainable or provable with reasonable certainty and competent proof, and thus, are not recoverable.

SIXTEENTH AFFIRMATIVE DEFENSE

and

FIRST CROSS-CLAIM

(against The Thelen Defendants)

Greenberg Traurig LLP ["GT"] hereby cross-claims against the Thelen Defendants (i.e. Thelen Reid Brown Raysman & Steiner LLP as successor to Thelen Reid & Priest LLP and Robert E. Krebs, Esq.), and, in doing so, alleges as follows (on information and belief as to paragraphs 54 through 57, 63, 64, 67 through 70, and 72):

Nature Of The Cross-Claim

52. GT denies any wrongdoing in its representation of Quickie. But, if and to the extent GT is found liable to plaintiff, the Thelen Defendants are liable to GT as successor counsel to the full extent GT is found liable. The action or inaction of the Thelen Defendants, who had already replaced and succeeded GT as counsel to Quickie with respect to the '160 Patent (including without limitation in the PTO and in the Medtronic Litigation [defined elsewhere herein]) when the maintenance fees for the '160 Patent became due on May 23, 2003, was the direct,

superseding and/or intervening cause, or a contributing cause, of any injuries resulting from the nonpayment of maintenance fee. If Quickie's claims against GT are not dismissed, then the Thelen Defendants are responsible and liable to GT to the extent GT may be found liable to Quickie or for contribution as to that liability.

The Parties

53. Cross-claimant Greenberg Traurig LLP is a New York limited liability partnership engaged in the practice of law, with offices in the City, County and State of New York.

54. Cross-claim defendant Thelen Reid Brown Raysman & Steiner LLP ["the Thelen Law Firm"] is a limited liability partnership engaged in the practice of law, with offices in the City, County and State of New York. It is a successor by merger of Thelen Reid & Priest LLP, formerly a law firm with offices in the City, County and State of New York prior to its merger with Brown Raysman & Steiner LLP in 2006, and thus is liable for any wrongdoing at issue herein by either of those law firms.

55. Defendant and cross-claim defendant Robert E. Krebs, Esq. is a partner of defendant the Thelen Law Firm, who transacted business in providing legal services in New York.

56. Quickie is the owner by assignment of U.S. Patent No. 6,066,160 ["the '160 Patent"], issued on May 23, 2000.

57. Stephen Colvin is an inventor of the patented device covered under the '160 Patent and a principal of Quickie.

Jurisdiction And Venue

58. This Court has personal jurisdiction over the Thelen Law Firm, since it is located and doing business in the State of New York.

59. This Court has jurisdiction over Robert E. Krebs, since the claims against him arose out of: [a] a transaction of business in New York and the providing of legal services in New York, and/or, [b] a tortious act by him causing injury in New York at a time when Krebs conducted sufficient business in New York or interstate commerce to be subject to personal long-arm jurisdiction in New York under CPLR §302.

60. Venue is properly situated in New York County, since GT and the Thelen Law Firm are residents of, located in, and maintain offices in this County.

Background

The '160 Patent

61. The '160 Patent covers a medical device designed to assist in heart surgeries ["the Quickie Device"].

62. Under applicable law and regulations, the owner of a patent must pay periodic maintenance fees to keep the patent in effect.

63. The first maintenance fee for the '160 Patent was due during the one year period beginning May 23, 2003 through May 23, 2004. The fee could be paid any time during that one year period.

64. The '160 Patent has now expired due to nonpayment of the maintenance fee which was due during the one year period from May 23, 2003 through May 23, 2004.

Greenberg Traurig's Engagement

65. In late 2001 and early 2002, GT was engaged by Quickie to provide litigation services in support of a claim by Quickie that Medtronic, Inc. ["Medtronic"] was infringing the '160 Patent. In connection therewith, GT filed an action on behalf of plaintiff against Medtronic

in the U.S. District Court for the Southern District of New York in February 2002 ["the Medtronic litigation"].

66. Quickie also engaged GT to represent it in the PTO concerning the '160 Patent. In connection therewith, GT filed a Change of Correspondence Address form and a Fee Address Indication Form with the PTO in December 2002.

The Replacement of GT by the Thelen Defendants

67. In no later than July 2002, Quickie replaced GT with Thelen Reid & Priest as its attorneys in the Medtronic Litigation.

68. Quickie also replaced GT with the Thelen Defendants as its counsel with respect to all other aspects of the '160 Patent, including dealings with and in the United States Patent & Trademark Office ["the PTO"] including (without limitation) assuring timely payment of maintenance fees.

69. A formal engagement agreement between Quickie and Thelen Reid & Priest was executed in July 2002. A Stipulation and Order of Substitution of Counsel was entered in the Medtronic Litigation in November 2002, pursuant to which Thelen Reid & Priest replaced GT as counsel of record for plaintiff.

70. Quickie replaced GT as its counsel as to the '160 Patent because Colvin, the inventor of the Quickie Device and a principal of Quickie, had a relative (a new son-in-law) who was an attorney at Thelen Reid & Priest and Colvin wanted to give that legal business to his relative's law firm.

71. When it hired the Thelen Defendants as to the '160 Patent, Quickie terminated GT's role, responsibility and services as to the '160 Patent.

72. Quickie executed a Revocation of Prior Powers of Attorney dated March 4, 2003, which was thereafter submitted to the PTO. In that same document, Quickie appointed the Thelen Defendants as the new attorneys for Quickie with respect to the '160 Patent with full and sole authority to "prosecute and transact all business" in the PTO. Thelen Reid & Priest also submitted to the PTO a Change of Attorney Docket and Change of Address Notice in December 2003, directing that all further communications regarding the '160 Patent be sent to the Thelen Defendants.

73. Thus, when maintenance fees on the '160 Patent became due, during the one year period commencing May 23, 2003, GT was no longer Quickie's attorney, having been replaced by the Thelen Defendants. GT's authority to act for Quickie (and any duty it had in that respect) had already ended two months earlier when Quickie had revoked all prior powers of attorney and appointed the Thelen Defendants to act for it instead.

The Thelen Defendants' Opportunities to Make or Assure Payment

74. The Thelen Defendants had the opportunity to pay the maintenance fees, or advise Quickie to pay the fees, before they were due and the '160 Patent expired for non-payment of those fees.

75. The Thelen Defendants had further opportunities to pay the maintenance fees, or advise Quickie to pay the fees, during the one year period commencing May 23, 2003 through May 23, 2004; and the Thelen Defendants also had opportunities to cure the nonpayment, or to advise Quickie to cure the nonpayment after the one year payment period expired on May 23, 2004, including when the Thelen Defendants filed amendments to the '160 Patent in 2005.

76. Any alleged failures concerning payment of those fees when and as due and any expiration of the '160 Patent due to such failures were caused by the Thelen Defendants.

77. The conduct (including action or inaction) of the Thelen Defendants concerning the maintenance fees due on the '160 Patent were the direct, superseding and/or intervening cause of any alleged damages to Quickie which resulted from the nonpayment of the maintenance fees on the '160 Patent and the alleged expiration of the '160 Patent.

78. Accordingly, if and to the extent GT is found liable to Quickie, the Thelen Defendants are responsible to GT for the full amount for which GT is found liable or for contribution as to any such liability in the proportionate amount of the responsibility of the Thelen Defendants for Quickie's damages as determined at trial.

SEVENTEENTH AFFIRMATIVE DEFENSE
and
SECOND CROSS-CLAIM
 (against The Rick Steiner Defendants)

Greenberg Traurig LLP ["GT"] hereby cross-claims against the Rick Steiner Defendants (i.e. Rick, Steiner Fell & Benowitz LLP and Alan Fell, Esq.), and, in doing so, alleges as follows (on information and belief as to paragraphs 81 through 84, those paragraphs realleged in paragraph 87 which were originally alleged on information and belief, 88 and 89):

Nature Of The Cross-Claim

79. GT denies any wrongdoing in its representation of Quickie. But, if and to the extent GT is found liable to plaintiff, the Rick Steiner Defendants are liable to GT as contemporaneous and subsequent continuing counsel to Quickie to the full extent GT is found liable. The action or inaction of the Rick Steiner Defendants, who were and served as outside general counsel to Quickie during the period that GT represented Quickie (including without limitation with respect to the '160 Patent [defined elsewhere herein]) when the maintenance fees for the '160 Patent became due, was the direct, superseding and/or intervening cause, or a contributing cause, of any injuries resulting from the nonpayment of maintenance fee. If Quickie's claims against GT are

not dismissed, then the Rick Steiner Defendants are responsible and liable to GT to the extent GT may be found liable to Quickie or for contribution as to that liability.

The Parties

80. Cross-claimant Greenberg Traurig LLP is a New York limited liability partnership engaged in the practice of law, with offices in the City, County and State of New York.

81. Cross-claim defendant Rick, Steiner Fell & Benowitz LLP ["the Rick Steiner Law Firm"] is a limited liability partnership engaged in the practice of law, with offices in the City, County and State of New York.

82. Cross-claim defendant Alan Fell, Esq. is a partner of defendant the Rick Steiner Law Firm, who transacted business in providing legal services in New York.

83. Quickie is the owner by assignment of U.S. Patent No. 6,066,160 ["the '160 Patent"], issued on May 23, 2000. Quickie maintains its business address at and through the Rick Steiner Law Firm.

84. Stephen Colvin is an inventor of the patented device covered under the '160 Patent and a principal of Quickie.

Jurisdiction And Venue

85. This Court has personal jurisdiction over the Rick Steiner Defendants, since they are residents of, located in, and doing business in the State of New York.

86. Venue is properly situated in New York County, since GT and the Rick Steiner Defendants are residents of, located in, and maintain offices in this County.

Background

The '160 Patent and GT's Engagement

87. GT repeats and realleges paragraphs 62 through 67 above as if separately and specifically alleged in this cross-claim.

The Rick Steiner Defendants' Role and Responsibility

88. During the period of GT's engagement and services for Quickie, the Rick Steiner Defendants were outside general counsel for Quickie in all of its business dealings, including (without limitation) with respect to the '160 Patent.

89. In that capacity, the Rick Steiner Defendants knew of and were advised that maintenance fees would have to be paid, and when they were due, with respect to the '160 Patent; and they had oversight responsibility as to Quickie's assets and dealing, including for assuring that the '160 Patent was maintained and kept extant.

90. The Rick Steiner Defendants were kept fully advised of, and maintained direct and continual oversight over, the work and services of GT for Quickie.

The Rick Steiner's Defendants' Opportunities to Make or Assure Payment

91. The Rick Steiner Defendants had the opportunity to pay the maintenance fees, or advise Quickie to pay the fees, before they were due and the '160 Patent expired for non-payment of those fees.

92. The Rick Steiner Defendants had further opportunities to pay the maintenance fees, or advise Quickie to pay the fees, during the one year period commencing May 23, 2003 through May 23, 2004; and the Rick Steiner Defendants also had opportunities to cure the nonpayment, or to advise Quickie to cure the nonpayment after the one year payment period expired on May 23, 2004, including when amendments were filed to the '160 Patent in 2005.

93. Any alleged failures concerning payment of those fees when and as due and any expiration of the '160 Patent due to such failures were caused by the Rick Steiner Defendants.

94. The conduct (including action or inaction) of the Rick Steiner Defendants concerning the maintenance fees due on the '160 Patent were the direct, superseding and/or intervening cause of any alleged damages to Quickie which resulted from the nonpayment of the maintenance fees on the '160 Patent and the alleged expiration of the '160 Patent.

95. Accordingly, if and to the extent GT is found liable to Quickie, the Rick Steiner Defendants are responsible to GT for the full amount for which GT is found liable or for contribution as to any such liability in the proportionate amount of the responsibility of the Rick Steiner Defendants for Quickie's damages as determined at trial.

WHEREFORE, defendant and cross-claimant GT respectfully requests judgment in its favor as follows:

1. dismissing the Amended Complaint;
2. awarding judgment against, directing payment by, the Thelen Defendants under GT's First Cross-Claim in any amount GT is found liable to Quickie or for contribution as to any such liability in the proportionate amount of the responsibility of the Thelen Defendants for Quickie's damages as determined at trial;
3. awarding judgment against, directing payment by, the Rick Steiner Defendants under GT's Second Cross-Claim in any amount GT is found liable to Quickie or for contribution as to any such liability in the proportionate amount of the responsibility of the Rick Steiner Defendants for Quickie's damages as determined at trial;
4. awarding GT costs and disbursements of this action and GT's cross-claims;

and

5. granting GT such other and further relief as the Court may deem just and proper.

Dated: July 9, 2007
New York, New York

POLLACK & KAMINSKY

By: 

Martin I. Kaminsky

Justin Y. K. Chu

114 West 47th Street

New York, New York 10036

(212) 575-4700

Attorneys for Defendant and Cross-Claimant
Greenberg Traurig, LLP

EXHIBIT AQ

BOX #1

Folder	Description
100-1-1 Corr.	1/23/02 letter from Greenberg to Colvin enclosing a copy of Quickie's patent No. 6,066,160 and print-outs of web-pages relating to Medtronic's device believed to infringe upon same
	2/5/02 fax from Greenberg to Colvin and Rick Steiner Segal & Fell enclosing copy of complaint
	2/02 correspondence between Quickie and Greenberg regarding retainer agreement
	2/14/02 transmittal from Greenberg to Rick Steiner Segal & Fell of stamped Summons and Complaint
	2/25/02 letter from Greenberg to TRP enclosing copies of the file wrappers to patent nos. 6,231,056; 6,331,157; 6,331,158; and 6,283,912
	3/1/02 letter from Greenberg to TRP enclosing copies of certain prior art references cited by the Guidant patents
	3/5/02 letter from Greenberg to Medtronic regarding patent no. 6,066,160. Attached is copy of complaint, including exhibits.
	3/6/02 letter from Colvin to Greenberg enclosing transcription of voicemail from Bob Hubert
	3/15/02 letter from Greenberg to Cardiac Surgery Technologies regarding rejection of offer to settle the outstanding patent infringement dispute; counter-offer
	3/22/02 transmittal from Greenberg to Colvin, Eugene Grossi, and A. Katz of draft of memo regarding Claims chart for US Patent No. 6,066,160 (Claims 13, 18, 19, 20, 22, and 33)
	3/22/02 transmittal from Greenberg to Colvin and Rick Steiner Segal & Fell of draft of letter to Cardiac Surgery Technologies rejecting Medtronic's counter-proposal
	3/28/02 letter from McDermott to Greenberg requesting 20 day extension to respond to the complaint
	3/28/02 letter from Greenberg to McDermott regarding response for request for 20 day extension to respond to the complaint
	4/1/02 fax from McDermott to Greenburg enclosing a stipulation and order extending Medtronic's time to respond to the complaint
	4/11/02 letter from Greenberg to TRP enclosing copy of the file wrapper for patent
	4/16/02 letter from Greenberg to Rick Steiner Segal & Fell regarding preparation and strategy for Markman Hearing
	4/17/02 letter from Greenberg to McDermott regarding Quickie's proposed schedule
	4/25/02 transmittal from Greenberg to TRP, Colvin, and Rick Steiner Segal & Fell of Answer to Complaint and Counterclaim
	4/25/02 letter from Greenberg to McDermott regarding Medtronic's proposed schedule
	4/25/02 letter from McDermott to Greenberg regarding proposed schedule
	4/26/02 transmittal from Greenberg to Colvin and Rick Steiner Segal & Fell of Copy of 4/26/02 New York Times article entitled "Medtronic Must Pay Rival \$158 Million"
	5/1/02 letter from McDermott to Greenberg enclosing order from Judge Lynch granting the admission, <i>pro hac vice</i> , of Raphael V. Lupo, Donna M. Tanguay, Brian E. Ferguson, and Stephen K. Shahida as counsel for the defendant
	5/3/02 letter from McDermott to Greenberg enclosing a draft of Medtronic's proposed protective order
	5/7/02 letter from Greenberg to McDermott enclosing Quickie's proposed Stipulation and Protective Order and First Set of Interrogatories, First Request for Production of Documents and Things, and First Request Request for Admissions
	5/8/02 letter from Greenberg to McDermott enclosing Second Set of Interrogatories
100-1-2 Corr. Cont.	5/14/02 letter from McDermott to Greenberg regarding proposed protective order and enclosing First Set of Interrogatories, Document Requests, and Requests for Admission
	5/15/02 transmittal from Greenberg to TRP, Colvin, and Rick Steiner Segal & Fell of Defendant's First Set of Discovery Requests
	5/15/02 letter from Greenberg to McDermott regarding receipt of discovery requests and proposed protective order (patent prosecution bar)

QLLC 0006571

100-1-2 Corr. Cont.	5/17/02 transmittal from Greenberg to TRP, Colvin, and Rick Steiner Segal & Fell of Scheduling Order
	5/20/02 fax from NYU School of Medicine to Todd Sharinn enclosing Medtronic Pricing Proposal for NYU Hospital Center
	5/24/02 fax from McDermott to Greenberg enclosing revised, redlined version of the draft Stipulation and Protective Order
	6/14/02 letter from Greenberg enclosing Quickie's responses to Defendant's Requests for Admission, Documents and Things and Interrogatories, as well as Quickie's production documents
	7/1/02 letter from Greenberg to Clerk of the SDNY regarding extension to file and serve Markman briefs
	7/8/02 letters from Greenberg to TRP, Colvin, and Rick Steiner Segal & Fell enclosing a copy of Quickie's Memorandum on Claim Construction, Declaration of Sharinn in support of same, Medtronic's Opening Brief on Claim Construction Issues and accompanying Declaration of Stephen K. Shahida
	7/26/02 letter from Greenberg to McDermott enclosing supplemental production in response to Medtronic's document requests and red-lined version of Quickie's proposed changes to the Protective Order
	8/2/02 letters from Greenberg to TRP, Dr. Stephen Colvin, and Rick Steiner Segal & Fell enclosing a copy of Quickie's Reply Memorandum on Claim Construction and Declaration of Todd S. Sharinn in support of same, and a copy of Medtronic's Reply Brief on Claim Construction
100-2-1 Corr. Cont.	9/3/02 letter from Greenberg to McDermott enclosing photographs of prototypes designed and developed by Quickie and/or Medtronic
	9/5/02 Transcript Order Form from Greenberg Taurig to Southern District Reporters for 9/4/02 Markman Hearing and Invoice
	9/5/02 letter from Greenberg to Judge Lynch enclosing the set of color slides introduced by Quickie during Markman Hearing of 9/4/02
	9/27/02 letter from Greenberg to Rick Steiner Segal & Fell enclosing copy of the transcript of the 9/4/02 Markman Hearing
	10/1/02 transmittal from Greenberg to Colvin, Mark Evens, and Rick Steiner Segal & Fell of Order adopting Plaintiff's construction of the disputed terms
	10/11/02 letter from TRP to NYU Medical Center and Rick Steiner Segal & Fell regarding problems with transfer of files
	10/11/02 letter from TRP to Greenberg requesting transfer of files
	10/15/02 letter from Greenberg to TRP regarding Stipulation of Substitution of Counsel
	10/16/02 letter from Greenberg to TRP regarding pick-up of Greenberg's files and index of contents
	10/17/02 email from Shari Markowitz-Savitt to Linda Cruz regarding Settlement documents
	10/17/02 email from Shari Markowitz-Savitt to Evens and Richard Taffet regarding document requests and production
	10/18/02 letter from TRP to Greenberg regarding Stipulation of Substitution of Counsel
	10/21/02 fax from TRP NY to TRP DC - Comp. Set/Volume Index Report dated 10/21
	11/26/02 fax from TRP to Doar Reick & Mack enclosing Stipulation (return date of Defendant's Motion to Dismiss, Plaintiff's answering papers, and Defendant's Reply papers)
	12/6/02 letter from TRP to Todd Sharinn (Greenberg) regarding Sharinn's Affidavit for use in Opposition to Motion to Stay
	12/10/02 letter from McDermott to Judge Lynch regarding improper attachment of Exhibit 10 to the Affirmation of Brian E. Ferguson in Support of Medtronic's Motion to Stay (also Judge's order endorsing letter)
	12/24/02 letter from TRP to Judge Lynch enclosing Affidavits of Shari Markowitz and Mark Fox Evens In Support of Plaintiff's Opposition to Defendants Motion to Stay and Plaintiff's Opposition to Defendant's Motion to Stay
	12/26/02 letter from TRP to McDermott regarding missing Table of Contents and Table of Authorities

	1/14/03 letter from McDermott to Judge Lynch enclosing motion papers in support of and in opposition to Medtronic's Motion to Stay District Court Proceedings Pending U.S. Patent & Trademark Office Reexamination Proceeding
	01/17/03 Order denying Defendant's motion for a stay

401-1-1	Legal Research - Cases cited by Medtronic in reply brief regarding claim construction
401-1-2	Legal Research - Patent Ownership search with Medtronic as Assignee

401-2-1	Legal Research - Key Cases Regarding Claim Construction and Definitions: <i>CCS Fitness v. Brunswick</i>
401-2-2	Legal Research - Key Cases Regarding Claim Construction and Definitions: <i>Johnson v. Zebco</i>
401-2-3	Legal Research - Key Cases Regarding Claim Construction and Definitions: Definitions - "Aperture"
401-2-4	Legal Research - Key Cases Regarding Claim Construction and Definitions: Articles regarding Apertures from A. Katz
401-2-5	Legal Research - Key Cases Regarding Claim Construction and Definitions: Definitions - "Cam"

405-1-1	Prototypes - Medtronic (EMPTY FOLDER)
405-1-2	Prototypes - Photographs (copies and disk)
405-1-3	Prototypes - Alan Katz (EMPTY FOLDER)
	Actual Prototypes

BOX #2

405-2-1	Medtronic Infringing Device "OCTOBASE" Retractor - actual device and photos on disk
405-2-2	Quickie's Demonstrative Exhibits in Support of its Claim Construction Arguments - Markman Hearing
405-2-3	Plaintiff's Privilege Log
405-2-4	Judge's Rules
405-2-5	Attorney Notes and Working Papers - contains attorney biographies and notes
405-2-6	Medtronic Webpage - Minimally Invasive Cardiac Surgery, What's new and Hot
405-2-7	Documents to be retained as privileged pending agreement/reply from Medtronic
405-2-8	6/5/01 letter from Fell to Medtronic enclosing a copy of the Concentric Passive Knotless Suture Terminator Patent Application
405-2-9	6/27/00 correspondence from Medtronic to A. Katz enclosing samples
405-2-10	7/20/99 correspondence from Medtronic to A. Katz enclosing latest radial retainer
405-2-11	12/11/98 fax from Medtronic to Fell transmitting Agreement for Mutual Exchange of Confidential Information
Dr. Colvin's File	Correspondence regarding the Amendment to the Knotless Suturing Agreement
	8/29/00 letter from Medtronic to Colvin regarding continued development initiatives with Quickie on a Facilitated Heart Valve attachment system
	1/16/02 letter from Colvin to Members of Quickie regarding agreement with Medtronic for an auto securing mechanism
405-2-12	Ring Drawings - Valve (Originals)
405-2-13	Allen Fell's File (Empty Folders)
405-2-14	Seagate 30(b)6 and Compaq 30(b)6 Outline

405-3-1	Patent & File History: Patent No. 6,066,160 - Copy of Patent, Quicke File History of US Patent & Trademark Office filings, and Prior Art References
---------	---

BOX #3

405-3-2:	Patent & File History: Patent No. 6,066,160 - Copy of Patent, Faxpat Report of US Patent & Trademark Office filings, and Prior Art References
405-3-3	Patent & File History: Patent No. 6,066,160 - Prior Art References
405-3-4	Patent & File History: Patent No. 6,331,157 - Copy of Patent, Quickie File History Containing US Patent & Trademark Office filings, and Prior Art References

BOX #4

405-3-5	Patent & File History: Patent No. 6,283,912 - Copy of Patent, Faxpat Report of US Patent & Trademark Office filings, and Prior Art References
405-3-6	Patent & File History: Patent No. 6,331,158 - Copy of Patent, Faxpat Report of US Patent & Trademark Office filings, and Prior Art References
405-3-7	Patent & File History: Patent No. 6,231,506 - Copy of Patent, Faxpat Report of US Patent & Trademark Office filings, and 7/21/99 fax from Tim Ryan (Medtronic) to A. Katz regarding proposed modifications to 206349, Rev. 3 (Retainer)
405-3-8	Patent & File History: Patent No. 6,231,506 - Prior Art References

BOX #5

405-3-9	Patent & File History: Patent No. 6,231,506 - Referenced Cites to Patent (printouts of various patents)
405-3-10	Patent & File History for Patent No. 6,231,506 - Prior Art References
405-3-11	3/13/01 letter from Sharinn to A. Fell enclosing most recent communication received from US Patent & Trademark Office - License for Foreign Filing
Patent & File History - Other Patent Apps	10/16/00 letter from Sharinn to Colvin and Eugene Grossi regarding Provisional Patent Application No. 60/160,662 for Wide View Endoscopic Compatible with HDTV Format - request for more technical information. Attached is drawing.
	10/3/00 letter from Sharinn to A. Fell regarding Provisional Patent Application No. 60/160,662 - request for further information to file Patent Application. Attached is Provisional Patent Application
	9/25/00 letter from Sharinn to A. Fell enclosing a copy of Amendment for Application No. 09/327,823 (Novel Annuloplasty Rings of Particular Use in Surgery for Mitral Valve) filed 9/20/00
405-3-12	10/18/98 Fax from A. Fell to Sharinn regarding patent application - names and addresses of inventors
Patent & File History - GT Patent File	11/13/98 letter from Sharinn to A. Fell regarding Passive Knotless Suture Terminator Patent Application
	11/17/98 letter from A. Fell to Colvin enclosing Patent Application for Knotless Suture Terminator
	11/30/98 letter from Sharinn to A. Fell regarding Patent Application for Knotless Suture Terminator - notification that patent has been filed and request for material prior art information
	1/25/99 letter from Sharinn to A. Fell regarding Patent Application for Knotless Suture Terminator - information regarding foreign patent protection
	8/12/99 letter from Sharinn to A. Fell regarding Patent Application Serial No. 09/198,087 - enclosing a copy of the Amendment prepared in response to Office Action mailed 7/22/99
	12/15/99 letter from Pepe & Hazard to A. Fell regarding fee for Patent Application No. 09/198,087
	5/30/00 letter from Sharinn to Colvin enclosing official US Letters Patent Drawings
405-3-13	Patent & File History: Prosecution of Patent 610 (EMPTY)
405-3-14	2/4/99 letter from Sharinn to A. Fell regarding Estimated Costs for foreign patent filing
Patent & File History	International Application dated 6/2/00
	7/19/00 letter from Pepe & Hazard to A. Fell regarding foreign application - allotted European Patent Application No. 99972518.7

	1/3/01 letter from Pepe & Hazard to Fell regarding foreign application - request to specify countries to seek protection
	Patent Cooperation Treaty - Notice Informing the applicant of the communication of the international application to the designated offices
	10/12/99 letter from Sharinn to Fell regarding Filing Cost in Taiwan
	2/18/99 memo from Fell to Sharinn regarding foreign filing - Quickie wishes to proceed with foreign filing
	405-3-15 Medtronic Heart Valves Santa Ana Facility Quality System Procedures - Product Development Protocol, Design Control and Review dated 7/13/01
Patent & File History	6/7/99 letter from Foster (Medtronic) to Fell responding to request to provide a summary of the status of the Quickie Attachment Mechanism Project along with a proposal on how to move forward related to the contract - regulatory control.
	6/18/99 letter from Fell to Foster (Medtronic) regarding November 5, 1998 License and Development Agreement between Quickie and Medtronic

BOX #6

405-4-1	TSS Working Copy of US Patents regarding Guidant - Patent 6,231,506 Faxpat Report of US Patent & Trademark Office Filings
405-4-2	TSS Working Copy of US Patents regarding Guidant - Patent 6,331,157 Faxpat Report of US Patent & Trademark Office Filings
405-4-3	TSS Working Copy of US Patents regarding Guidant - Prior art references for Patent 6,283,912
405-4-4	TSS Working Copy of US Patents regarding Guidant - Prior art references for Patent 6,331,157
405-4-5	TSS Working Copy of US Patents regarding Guidant - Prior art references for Patent 6,331,158
405-4-6	TSS Working Copy of US Patents regarding Guidant - Patent 6,331,158 Faxpat Report of US Patent & Trademark Office Filings
405-4-7	US Patent & Trademark Office, Patent Full Text and Image Database: Printouts of numerous patents relating to retractors

BOX #7

405-4-8	TSS Working Copy of US Patents regarding Guidant - Patent 6,283,912 B1 Faxpat Report of US Patent & Trademark Office Filings
405-4-9	TSS Working Copy of US Patents regarding Guidant - Patent 1,583,727 Faxpat Report of US Patent & Trademark Office Filings
405-4-10	TSS Working Copy of US Patents regarding Guidant - Patent 1,244,537 Faxpat Report of US Patent & Trademark Office Filings

500-1-1	Pleadings - Quickie v. Medtronic (Volume 1)
500-1-1a	Pleadings - Quickie v. Medtronic (Volume 1A)
500-1-2	Pleadings - Quickie v. Medtronic (Volume 2)
500-1-3	Pleadings - Quickie v. Medtronic (Volume 3)
501-1-1	Pleadings - Quickie v. Medtronic (Original Discovery)

BOX #8

606-1-1 Client Docs	Quickie Articles of Organization and Operating Agreement
	Fax log report for S.B. Colvin
	Copy of Patent 6,066,160
	Drawings dated 9/26
	11/13/98 Fax from Todd Sharinn to Les Hoffman enclosing drawings
	4/9/99 Letter from Todd Sharinn to Patent & Trademark Office enclosing copies of erroneous materials the patent office prepared and forwarded to Sharinn
	US Patent & Trademark Office Notice of Disposition of Database Discrepancy to Sharinn dated 3/31/99
	3/30/99 letter from Sharinn to US Patent & Trademark Office regarding Patent Application Serial No. 09198087, enclosing copy of the Notice of Recordation of Assignment Document
	2/22/99 letter from Charles Koeber regarding Novelty search, Surgical Robot Automation
	2/11/99 letter from Sharinn to Charles Koeber requesting patent novelty search - Automations of Surgical Robots
	Draft of Memo regarding Robotic Surgical Automations of Particular Use in Minimally Invasive or Endoscopic Surgery dated 2/8/99
	Memo regarding Passive Knotless Suture Terminator For Use in Minimally Invasive Surgery and to Facilitate Standard Tissue Securing
	7/12/99 fax from Pepe & Hazard to Les Hoffman enclosing drawings
	8/14/99 letter from Colvin to Medtronic regarding follow up to conversation following the "wet lab" session on Long Island on 8/13/99
	7/30/99 email from Eugene A. Grossi to Todd Sharinn regarding ideas for Patent 5,391,173
	US Patent & Trademark Office Action Summary to Sharinn regarding Application No. 09/198,087, responding to communication filed 11/23/98, allowing claims 14-34 and rejecting claims 1-5 and 7-13. Attached is notice of References cited (Patents 5,391,173; 5,306,290; 4,823,794; and 3,541,591) and copies of patent summaries of each
	Copy of Ring Drawings - Valve
	Folder from Colvin to Greenberg containing disk and notebook of notes and drawings
606-1-2 Client Corp. Docs	6/16/99 memo from A. Katz to Colvin regarding an evaluation of Medtronic Prototype (Product was mis-designed by Medtronic). Attached are drawings.
	A. Katz notes on conversation with Tim Ryan on 6/16/99. Manufacturing of Knotless device was not done to spec.
	6/16/99 letter from A. Katz to Alan Fell (Rick Steiner) and Todd Sharrin regarding product supplied by Medtronic. Product was mis-designed by Medtronic and manufactured poorly.
	6/7/99 inter-office memo by Tim Ryan (Medtronic) regarding the status for Project Quickie (Suture Retention System)
	6/7/99 inter-office memo by Jeff Gross (Medtronic) regarding Project Quickie Key Issues
	4/16/02 letters from Greenberg to Quickie enclosing invoice no. 874423 and no. 874424 for legal services and expenses rendered through and including March 31, 2002
	2/13/02 letter from Rick Steiner Segal & Fell to TRP regarding Quickie and Medtronic, possible patent infringement claim.
	Citibank Bank Account Information
	Quickie Tax Information
	Legal Bills

610-1-1 Docs Produced by Med (MEDQ 00001- 00638)	1/28/99 letter from A. Fell (Rick Steiner) to Medtronic regarding notification from the US Patent & Trademark Office that patent application no. 09/198,087 has been filed (MEDQ 00001-00005) 10/16/98 email from Todd Sharinn to Peter Forrest (Medtronic) regarding revised product description. Attached is patent no. 5,413,585 (Self Locking Suture Lock) (MEDQ 00008-00018) 9/28/98 email from Peter Forest to unknown recipient Regarding NYU Language (MEDQ 00019-00020) 6/1/99 letter from Medtronic to A. Fell (Rick Steiner) regarding license Agreement Quickie & Medtronic. Requesting copy of patent application. (MEDQ 00021) 10/28/99 letter from Medtronic to A. Fell regarding the completed wet lab regarding the quickie attachment mechanism. (MEDQ 00022) Copy of Patent 6,066,160 and numerous other patents (MEDQ 00050-00638)
610-1-2 Produced by Med	Printout of numerous patents (MEDQ 00639-950) File for patent no. 6,066,160 - documents filed with US Patent & Trademark Office (MEDQ00951-01048)

610-2-1	Documents Produced by Quickie (Quick 1-576) - Quickie File History for US Patent No. 6,066,160
610-2-2	Documents Produced by Quickie (Quick 577-1161) - Faxpat File for US Patent No. 6,231,506

BOX #9

610-2-3	Documents Produced by Quickie (Quick 1162-1935) - Copies of Surgical Patents (Various Inventors and Assignees)
610-2-4	Documents Produced by Quickie (Quick 1936-2522) - US Patent & Trademark Office, Patent Full Text and Image Database: Printout of various surgical patents (Various Inventors and Assignees)
610-2-5	Documents Produced by Quickie (Quick 2523-3126) - Faxpat File for Patent No. 6,311,157 and prior art references
610-2-6	Documents Produced by Quickie (Quick 3127-3760) - Copies of Surgical Patents (Various Inventors and Assignees)

BOX #10

610-2-7	Documents Produced by Quickie (Quick 3761-4380) - Copies of Surgical Patents (Various Inventors and Assignees)
610-2-8 Docs Produced by Quickie (4463- 4643)	Medtronic Manual: Directions for use of OCTOBASE 28707 - Suture Holding Inserts (Quick 004463-004492) Medtronic Meeting Summary dated 11/30/99. Subject: Project Status, Wet Lab Results - Quickie Suture Retention System Status and Quickie Band. Attached is Knotless Retainer, Annuloplasty Band Project Status and Wet-lab/Demo Plan dated 10/8/1999 (Quick 4493-4508) Medtronic Meeting Summary dated 8/16/99. Subject: Project Status, Wet Lab Results - Quickie Suture Retention System Status and Quickie Band. Attached is Knotless Retainer, Annuloplasty Band Project Status and Wet-lab/Demo Plan dated 8/13/1999 and four prototype candidate retainer designs (Quick 4509-4532) 6/17/99 letter from Tim Ryan (Medtronic) to Eugene Grossi and Allan Katz responding to June 16th letter: Medtronic Prototype Suture Retention Parts. Attached are drawings. (Quick 4533-4544) Medtronic NYU Band, Retention Divide Status Report dated 4/19/99 (Quick 4545-4552) Medtronic Meeting Summary dated 5/6/99. Subject: Project Status - NYU Partial Band, Suture Retention System Status. (Quick 4553-4556) Medtronic Meeting Summary dated 2/3/99. Subject: Partial annuloplasty ring development and suture retention system. (Quick 4557-4559) Quotation from Phillips Origen (Metal Injection Molding) to Medtronic for Retainer dated 8/21/99. (Quick 4560-4568)
610-2-9	Documents Produced by Quickie (Quick 4644-4671) - Photos of Prototype

820-1-1	Extra Copies of Quickie v. Medtronic Pleadings
820-2-1	Duplicates of Quickie Productions

QLLC 0006578

EXHIBIT AR

GREENBERG
ATTORNEYS AT LAW
TRAURIG

Todd S. Sharinn
212-801-2157
sharinn@gtlaw.com

April 9, 2003

Quickie, LLC
c/o Rick, Steiner, Segal & Fell
Three New York Plaza
New York, New York 10004
Attn: Alan Fell, Esq.

Re: Quickie, LLC
Passive Knotless Suture System Patent (6,066,160)
Our Ref. 51822.010700

Dear Alan:

Enclosed please find our invoice no. 1022157 for a total amount of \$739.60 for legal services and expenses rendered through and including March 31, 2003.

If you have any questions, please do not hesitate to contact me.

Very truly yours,


Todd S. Sharinn

TSS:ai
Enclosures

GREENBERG TRAURIG, LLP
885 THIRD AVENUE
NEW YORK, NEW YORK 10022-4834
212-801-2100 FAX 212-688-2449 www.gtlaw.com
NEW YORK ATLANTA BOCA RATON BOSTON CHICAGO DENVER FORT LAUDERDALE LOS ANGELES MIAMI ORLANDO PHILADELPHIA PHOENIX
TALLAHASSEE TYSONS CORNER WASHINGTON, D.C. WEST PALM BEACH WILMINGTON

RS003097

GREENBERG
ATTORNEYS AT LAW
TRAURIG

Invoice No.: 1022157
File No.: 51822.010700
Bill Date: April 7, 2003

Quickie, LLC
c/o Rick, Steiner, Segal & Fell
Three New York Plaza
New York, New York 10004

Attn: Alan L. Fell, Esq.

INVOICE

Re: Passive Knotless Suture System Patent (6,066,160)

Legal Services through March 31, 2003:

Total Fees: \$ 735.00

Expenses:

Facsimile Charges 4.00
Photocopy Charges 0.60

Total Expenses: \$ 4.60

Current Invoice: \$ 739.60

PS:YA
Tax ID: 13-3613083

GREENBERG TRAURIG, LLP
885 THIRD AVENUE NEW YORK, NEW YORK 10022
212-801-2100 FAX 212-688-2449 www.gtlaw.com
AMSTERDAM ATLANTA BOCA RATON BOSTON CHICAGO DENVER FORT LAUDERDALE LOS ANGELES MIAMI NEW YORK NEW
JERSEY
ORLANDO PHILADELPHIA PHOENIX TALLAHASSEE TYSONS CORNER WASHINGTON, D.C. WEST PALM BEACH WILMINGTON
ZURICH

RS003098

GREENBERG
ATTORNEYS AT LAW
TRAURIG

Invoice No.: 1022157
File No.: 51822.010700

**WIRING INSTRUCTIONS FOR GT FIRM ACCOUNT
FOR FEES & COSTS ARE AS FOLLOWS:**

TO: CITIBANK, F.S.B.
ABA #: 266086554
CREDIT TO: GREENBERG TRAURIG ACCOUNT
ACCOUNT #: 3200175071

PLEASE
REFERENCE: CLIENT NAME: QUICKIE, LLC
FILE NUMBER: 51822.010700
INVOICE NUMBER: 1022157
ATTORNEY NAME: Paul J. Sutton

PS:YA
Tax ID: 13-3613083

GREENBERG TRAURIG, LLP
885 THIRD AVENUE NEW YORK, NEW YORK 10022
212-801-2100 FAX 212-688-2449 www.gtlaw.com
AMSTERDAM ATLANTA BOCA RATON BOSTON CHICAGO DENVER FORT LAUDERDALE LOS ANGELES MIAMI NEW YORK NEW
JERSEY
ORLANDO PHILADELPHIA PHOENIX TALLAHASSEE TYSONS CORNER WASHINGTON, D.C. WEST PALM BEACH WILMINGTON
ZURICH

RS003099

Invoice No.: 1022157
Re: Passive Knotless Suture System Patent (6,066,160)
Matter No.: 51822.010700

Page 1

Description of Professional Services Rendered:

DATE	TIMEKEEPER	DESCRIPTION	HOURS	AMOUNT
03/18/03	Todd S. Sharinn	Review PTO reexamination statement and file (.9); review prior art cited (.6); telephone call with examiner (.2).	1.70	595.00
03/19/03	Todd S. Sharinn	Telephone interview with Examiner (.4).	0.40	140.00
Total Time:			2.10	
Total Fees:				\$ 735.00

RS003100

Invoice No.: 1022157
Re: Passive Knotless Suture System Patent (6,066,160)
Matter No.: 51822.010700

Page 2

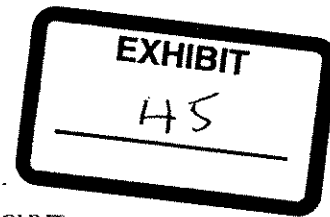
Description of Expenses Billed:

DATE	DESCRIPTION	AMOUNT
10/22/02	Copy; 4 Page(s) by 2157	\$ 0.60
12/16/02	Facsimile; 17033051013, 4 Page(s) by 7431	\$ 4.00
Total Expenses:		\$ 4.60

RS003101

Invoice No.: 986682
 Re: Reexamination of U.S. Patent No. 6,066,160 by Medtronic
 Matter No.: 51822.010900

Page 1



Description of Professional Services Rendered:

<u>DATE</u>	<u>TIMEKEEPER</u>	<u>DESCRIPTION</u>	<u>HOURS</u>	<u>AMOUNT</u>
12/03/02	Todd S. Sharinn	Telephone call with S. Colvin (.2); review papers filed by Medtronic (1.8); legal research regarding options available (.8)	2.80	882.00
12/06/02	Todd S. Sharinn	Telephone call from M. Evens (.3)	0.30	94.50
12/09/02	Todd S. Sharinn	Confer with A. Eeff regarding status and strategy (.3)	0.30	94.50
12/10/02	Todd S. Sharinn	Confer with M. Evens regarding status and strategy (.3); review and revise affirmation of T. Sharinn (.6)	0.90	283.50
12/12/02	Todd S. Sharinn	Exchange emails with M. Evens and revise declaration (.3)	0.30	94.50
12/13/02	Todd S. Sharinn	Finalize and forward declaration (.3)	0.30	94.50
<u>Total Time:</u>			4.90	
<u>Total Fees:</u>				\$ 1,543.50

DUPLICATE COPY

Invoice No.: 1022157
Re: Passive Knotless Suture System Patent (6,066,160)
Matter No.: 51822.010700

Page 1

Description of Professional Services Rendered:

<u>DATE</u>	<u>TIMEKEEPER</u>	<u>DESCRIPTION</u>	<u>HOURS</u>	<u>AMOUNT</u>
03/18/03	Todd S. Sharinn	Review PTO reexamination statement and file (.9); review prior art cited (.6), telephone call with examiner (.2).	1.70	595.00
03/19/03	Todd S. Sharinn	Telephone interview with Examiner (.4).	0.40	140.00
			<u>Total Time:</u>	
			<u>Total Fees:</u>	\$ 735.00

DUPLICATE COPY

GT 0015174

Invoice No.: 800739
 Re: General
 Matter No.: 51822.010000

EXHIBIT

48

Description of Professional Services Rendered:

<u>DATE</u>	<u>TIMEKEEPER</u>	<u>DESCRIPTION</u>	<u>HOURS</u>
09/09/01	Todd S. Sharinn	Review and revise Colvin consulting agreement (.9).	0.90
09/10/01	Todd S. Sharinn	Telephone calls with Alan Fell regarding consulting agreement (.3).	0.30
09/21/01	Todd S. Sharinn	Memo to A. Fell regarding Colvin consulting agreement (1.3).	1.30
09/24/01	Todd S. Sharinn	Review Quickie/Medtronic Facilitated Surgical Attachment License and Development Agreement (1.1).	1.10
09/25/01	Todd S. Sharinn	Review Quickie/Medtronic Facilitated Surgical Attachment License and Development Agreement (.7); review Medtronic Product Development process (.5); telephone calls with A. Fell (.2).	1.90
<u>Total Time:</u>			5.50

Summary of Fees (51822.010000)

<u>Timekeeper</u>	<u>Hours</u>	<u>Amount</u>
Todd S. Sharinn	5.50	1,540.00
Totals:	5.50	\$ 1,540.00

GT 0015286

Invoice No. 817895
 Re General
 Matter No. 51822.010000

Description of Professional Services Rendered:

<u>DATE</u>	<u>TIMEKEEPER</u>	<u>DESCRIPTION</u>	<u>HOURS</u>
10/01/01	Todd S. Sharinn	Review concentric passive knotless suture terminator patent application and revise Facilitated Surgical Attachment License and Development Agreement (6.2).	6.20
10/02/01	Todd S. Sharinn	Draft and revise license agreement with Medtronic (3.7).	3.70
10/03/01	Todd S. Sharinn	Draft and revise license agreement with Medtronic (2.4).	2.40
10/04/01	Todd S. Sharinn	Telephone call from A. Fell (.2); revise license agreement (.4).	0.60
10/20/01	David . Heath	Discussed new patent application with T. Sharinn and clients Gene Grossi and Allan katz re new patent application and reviewed file of previous patent for clients.	3.50
10/30/01	Todd S. Sharinn	(Arterial Fixation Avoiding Sutures Device Patent Application) Telephone call with G. Grossi regarding description of device (.3); confer with David Heath regarding preparation of patent application (.3).	0.60
<u>Total Time:</u>			<u>17.00</u>

Summary of Fees (51822.010000)

<u>Timekeeper</u>	<u>Hours</u>	<u>Amount</u>
David . Heath	3.50	805.00
Todd S. Sharinn	13.50	3,780.00
Totals:	17.00	\$ 4,585.00

Invoice No.: 822468
 Re: General
 Matter No.: 51822.010000

Description of Professional Services Rendered:

<u>DATE</u>	<u>TIMEKEEPER</u>	<u>DESCRIPTION</u>	<u>HOURS</u>
11/05/01	Todd S. Sharinn	Review issues raised by Medtronic regarding changes to license agreement and status and strategy for responding to same (.3).	0.30
11/21/01	Todd S. Sharinn	Telephone call from G. Grossi regarding possible infringement of first knotless patent by Medtronic (.2).	0.20
11/26/01	Todd S. Sharinn	Telephone call from G. Grossi (.2); compare Medtronic "Octobase" device with claims of U.S. Patent No. 6,066,160 (.7); review license agreement (.6); review file wrapper to U.S. Patent No. 6,066,160 (.8); telephone call with Alan Fell regarding status and strategy for dealing with potential infringement of U.S. Patent No. 6,066,160 (.3).	2.40
11/28/01	Denise . Alexander	Search of USPTO records for use of patent 6066160 as prior art in subsequent filings. Also checked foreign patent files.	1.50
11/28/01	Todd S. Sharinn	Reviewed Medtronic, Inc. patent for similarly worded patents. Telephone call with Alan Fell regarding status and strategy (.3); due diligence regarding potential infringement of U.S. Pat. No. 6,066,160 (.8); confer with Denise Alexander regarding research to be conducted (.2); telephone call from G. Grossi regarding device (.2); telephone call from Alan Fell regarding status and strategy of responding to Medtronic's revisions of Facilitated Attachment License Agreement (.6); review modified Facilitated Attachment License Agreement (2.4).	4.50
11/30/01	Paralegal Clerk	Patent research for Denise Alexander	0.20
<u>Total Time:</u>			9.10

Summary of Fees (Current Invoice)

<u>Timekeeper</u>	<u>Hours</u>	<u>Amount</u>
Todd S. Sharinn	7.40	2,072.00
Denise . Alexander	1.50	240.00
Paralegal Clerk	0.20	30.00
Totals:	9.10	\$ 2,342.00

Invoice No.: 869842
Re: General
Matter No: 51822.010000

Page 3

Description of Professional Services Rendered:

<u>DATE</u>	<u>TIMEKEEPER</u>	<u>DESCRIPTION</u>	<u>HOURS</u>	<u>AMOUNT</u>
03/22/07	Todd S. Shamm	Telephone call with search agent (.3); letter to patent search service regarding novelty search for improved surgical drape (.4).	0.70	220.50
<u>Total Time:</u>			0.70	
<u>Total Fees:</u>				\$ 220.50

DUPLICATE COPY

GT 0015299

Invoice No.: 920624
Re: General
Matter No.: 51822.010000

Description of Professional Services Rendered:

<u>DATE</u>	<u>TIMEKEEPER</u>	<u>DESCRIPTION</u>	<u>HOURS</u>	<u>AMOUNT</u>
07/11/07	Paralegal Clerk	Library Research on status of patent application for T. Sharinn	0.30	45.00
07/31/07	Todd S. Sharinn	Review Facilitated Surgical Attachment License and Development Agreement (.3); telephone calls from Alan Feld regarding issues arising under agreement sections 2.1, 2.2 and 6.8 (.2)	0.50	157.50
<u>Total Time:</u>			0.80	
<u>Total Fees:</u>				\$ 202.50

DUPLICATE COPY

Page 1

Invoice No. 999539
Re: General
Matter No.: 51822.010000

Description of Professional Services Rendered:

<u>DATE</u>	<u>TIMEKEEPER</u>	<u>DESCRIPTION</u>
01/03/03	Todd S. Sharrin	Prepare patent application (1.0)

	<u>HOURS</u>	<u>AMOUNT</u>
	1.00	350.00
<u>Total Time:</u>	1.00	
<u>Total Fees:</u>		\$ 350.00

DUPLICATE COPY

GT 0015306

Invoice No.: 1022875
Re: General
Matter No.: 51822 010000

Page 1

Description of Professional Services Rendered:

<u>DATE</u>	<u>TIMEKEEPER</u>	<u>DESCRIPTION</u>	<u>HOURS</u>	<u>AMOUNT</u>
03/27/07	Todd S. Shannr	Letter to Dr. Colvin regarding status and strategy for various pending matters (.2).	0.20	70.00
			<u>Total Time:</u>	
			0.20	
			<u>Total Fees:</u>	\$ 70.00

DUPLICATE COPY

GT 0015311

Invoice No.: 838282
Re: Quickie LLC v. Medtronics
Matter No.: 51822.010400

Page

EXHIBIT49Description of Professional Services Rendered:

<u>DATE</u>	<u>TIMEKEEPER</u>	<u>DESCRIPTION</u>	<u>AMOUNT</u>
12/03/01	Todd S. Sharinn	Confer with Denise Alexander regarding status of search (.1); review preliminary results of due diligence searches (.7).	224.00
<u>Total Fees:</u>			\$ 224.00

DUPLICATE COPY

Invoice No.: 862518
 Re: Quickie LLC v. Medtronic
 Matter No.: 51822.010400

Page 1

Description of Professional Services Rendered:

DATE	TIMEKEEPER	DESCRIPTION	AMOUNT
02/02/02	Todd S. Sharinn	Meeting with S. Colvin, G. Grossi, A. Katz and P. Sutton regarding causes of action against Medtronic (1.5); Internet search (.3).	0.00
02/02/02	Paul J. Sutton	Meeting with S. Colvin, G. Grossi, A. Katz and P. Sutton regarding causes of action against Medtronic (1.5); Internet search (.3).	0.00
02/04/02	Joseph V. Saphia	Reviewed licensing and development agreement in preparation of drafting complaint; discussed facts of the case with T. Sharinn; drafted complaint.	240.00
02/04/02	Todd S. Sharinn	Telephone calls from Gene Grossi, Stephen Colvin and Alan Fell (.4).	126.00
02/05/02	Denise . Alexander	Pulled two patents.	80.00
02/05/02	Todd S. Sharinn	Review license and non-disclosure agreements and correspondence (3.2); review Medtronic's web-site (.6); review patent claims and infringing device with Paul Sutton (.3); prepare Complaint (2.3).	2016.00
02/11/02	David G. Palmer	Assisted Todd Sharinn with preparing Complaint, Summons, Rule 1.9 statement and Civil cover sheet.	202.50
02/11/02	Todd S. Sharinn	Review and revise Complaint and have filed in Southern District of New York (.6).	189.00
02/12/02	Todd S. Sharinn	Telephone calls with Dr. S. Colvin and A. Galloway (.3); telephone call with Alan Fell regarding status and strategy (.2).	157.50
02/13/02	Denise . Alexander	Further search for patents and retrieval of patents off website.	80.00
02/13/02	Meg A. Blewitt	Reviewed emails re: various file histories; meet with Todd and retrieve patents.	45.00
02/14/02	Denise . Alexander	Retrieving off website further patents for attorney.	112.00
02/14/02	Meg A. Blewitt	Reviewed emails from TSharinn re: various file histories; telephone calls to Faxpat for retrieval of same.	75.00
02/14/02	Todd S. Sharinn	Review United States Patent No. 6,331,157 B2 in view of Quickie Patent and review related patents granted by the United States Patent and Trademark Office (1.1); review Quickie/Ethicon file (.3).	441.00
02/15/02	Todd S. Sharinn	Telephone call from Dr. Colvin regarding status of investigation and strategy for moving forward (.2).	63.00
02/20/02	Meg A. Blewitt	Reviewed invoices against file histories sent via Fed-ex; emails to TSharinn and DAlexander re: incoming files.	45.00
02/20/02	Todd S. Sharinn	Telephone call from Stephen Colvin regarding status and strategy (.2); confer with patent search service regarding status of investigation (.2).	126.00
02/21/02	Todd S. Sharinn	Review file wrapper to U.S. Patent No. 6,331,157 (3.7); prepare memo to file regarding same (1.1).	1512.00
02/22/02	Todd S. Sharinn	Review and revise memo regarding U.S. Patent No. 6,331,157 (.7); confer with Paul Sutton regarding status and strategy (.2); review and prepare memo regarding file wrapper to U.S. Patent No. 6,231,506 (6.4).	2299.50
02/25/02	Paralegal Clerk	Library Research for attorney Todd Sharinn. (patent research)	150.00
02/25/02	Paralegal Clerk	Library Research on patent family for incision apparatus for T. Sharinn	112.50

GT 0015195

Invoice No.: 862518
 Re: Quickie LLC v. Medtronics
 Matter No.: 51822.010400

Page 2

Description of Professional Services Rendered

02/25/02	Paralegal Clerk	Library Research Search and pull 57 patents for T. Sharinn.	150.00
02/25/02	Paralegal Clerk	Research regarding patent information from list of patents provided by Todd Sharin. Search United States Patent and Trademark Office database for information regarding patent application and issue date, claims information and abstract and forward for each patent researched to Denise Alexander	150.00
02/25/02	Todd S. Sharinn	Letter to Mark Efans (2); legal and technical research (2.7).	913.50
02/26/02	Paralegal Clerk	Library Research on patent family for incision apparatus for T. Sharrin	112.50
02/26/02	Paralegal Clerk	Library Research on patent family of incision apparatus for T. Sharinn	30.00
<u>Total Fees:</u>			<u>\$ 9,428.00</u>

DUPLICATE COPY

Invoice No.: 888138
 Re: Quickie LLC v. Medtronics
 Matter No.: 51822.010400

Page 1

Description of Professional Services Rendered:

<u>DATE</u>	<u>TIMEKEEPER</u>	<u>DESCRIPTION</u>	<u>AMOUNT</u>
04/01/02	Todd S. Sharinn	Telephone calls from opposing counsel regarding stipulation to provide Defendant additional time to answer (.4); review and revise proposed stipulation to extend time for Defendant to answer Complaint (.2)	189.00
04/01/02	Habibah Tamraz	Familiarization with case history. Research on the information to be used to draft Interrogatories and Requests for Documents and Things.	240.00
04/02/02	Todd S. Sharinn	Telephone call from A. Fell regarding status and strategy (.2); telephone calls from opposing counsel (.3); confer with H. Tamraz regarding preparing request for production of documents and things and interrogatories (.3); confer with P. Sutton regarding status and strategy for filing motion for summary judgment (.3); legal research (1.1).	693.00
04/02/02	Habibah Tamraz	First draft of First Set of Interrogatories and First Request for Production of Documents and Things.	108.00
04/03/02	Daniel A. Ladow	Conference with T. Sharinn and P. Sutton re: motion and Markman strategy and related issues	135.00
04/03/02	Todd S. Sharinn	Confer with P. Sutton and D. Ladow regarding strategy from case, filing of summary judgment and hearing (.8); research regarding hearing (1.9).	850.50
04/03/02	Habibah Tamraz	Re-drafting of First Set of Interrogatories and First Request for Production of Documents and Things.	120.00
04/04/02	Todd S. Sharinn	Confer with Alan Fell regarding status and strategy (.4).	126.00
04/04/02	Habibah Tamraz	Re-drafting of First Set of Interrogatories and First Request for Production of Documents and Things.	300.00
04/05/02	Habibah Tamraz	Finalization of first draft of First set of Interrogatories and First Request for Production of Documents and Things.	300.00
04/10/02	Todd S. Sharinn	Telephone call with Alan Fell regarding Summary Judgment (.2); legal research (.8); review prior art (.7); prepare for conference call with Mark Evens, Alan Fell and Paul Sutton (.2).	598.50
04/10/02	William G. Todd	Review U.S. Patent No. 6,066,160 and Complaint against Medtronic Inc.	250.00
04/11/02	Todd S. Sharinn	Review Judge Lynch's notice of conference and template for scheduling order (.3); letter to opposing counsel (.2); telephone conference with Alan Fell, Paul Sutton and Mark Evens regarding status and strategy for case (.9); review Idea Submission and Evaluation Agreement and follow-up call with Alan Fell (.2); review file wrapper and prepare letter forwarding copy of same to Mark Evens (.5); legal research regarding Judge Lynch (.2).	724.50
04/11/02	Paul J. Sutton	Preparation for and conference with T. Sharinn re strategy and status; preparation for and participating in conference call with A. Fell; preparation for and participating in conference call with A. Fell and M. Evans re summary judgement, Markman, Rule 26 conference with Judge Lynch, scheduling and other case issues.	1272.00
04/11/02	Habibah Tamraz	Re-drafting of First Set of Interrogatories and First Request for Production of Documents and Things.	180.00

GT 0015200

Invoice No.: 888138
 Re: Quickie LLC v. Medtronics
 Matter No.: 51822.010400

Page 2

Description of Professional Services Rendered

04/12/02	Denise J. Alexander	Order patent file history for #6066160 for Todd Sharinn.	48.00
04/12/02	Todd S. Sharinn	Telephone call with Mark Evens regarding status and strategy (.4).	126.00
04/12/02	Eli Weiss	Reviewing Quickie Patent 6,066,160 and device of Medtronics	2625.00
04/15/02	Todd S. Sharinn	Legal research regarding Judge Lynch (.6); telephone call from opposing counsel regarding preparing scheduling order (.2); confer with Eli Weiss regarding Medtronic device and complaint and exhibits thereto (.2); letter to opposing counsel (.1).	346.50
04/15/02	Eli Weiss	Studying Quickie patent No. 6,066,160 and device of Medtronics	3468.75
04/16/02	Todd S. Sharinn	Conference with Paul Sutton and Bill Todd regarding strategy for case management plan (.7); telephone conference with opposing counsel regarding case management plan and protective order (.4); letter to opposing counsel regarding same (.3).	441.00
04/16/02	William G. Todd	Attend meeting with P. Sutton and T. Sharinn; outline pre-trial schedule, prepare file memorandum.	500.00
04/16/02	Eli Weiss	Reviewing claims of patent No. 6,066,160, device of Medtronics, and claim chart	2062.50
04/22/02	Scott J. Bornstein	Review complaint and patent-in-suit; preparation of litigation notebook.	525.00
04/24/02	William G. Todd	Initial preparation of written discovery requests.	500.00
04/25/02	Todd S. Sharinn	Review and respond to letter from opposing counsel regarding proposed schedule and various pre-conference issues (.3); review Answer filed by Medtronic (.4); confer with Alan Fell (.2); telephone call from Dr. Colvin regarding status and strategy (.2); confer with Bill Todd regarding interrogatories (.3).	441.00
04/26/02	Todd S. Sharinn	Confer with Bill Todd and Paul Sutton regarding conference/hearing (.2); legal research regarding assignee estoppel doctrine and applicability to present circumstances (.6); travel to and attend conference/hearing (3.9).	1480.50
04/26/02	William G. Todd	Review '160 patent specification and claims; prepare interrogatories and document requests.	3000.00
04/29/02	Scott J. Bornstein	Attend meeting with W. Todd and T. Sharinn; conduct infringement analysis to determine which claims to assert; review prior art patent.	700.00
04/29/02	Todd S. Sharinn	Legal research regarding Defendant's possible arguments as indicated during the April 16, 2002 conference (1.7); conference with Bill Todd and Scott Bornstein regarding status and strategy (1.2); review PTO wrapper (.9); review file correspondence with Medtronic (.3); review prior art patent (.4).	1291.50
04/29/02	Paul J. Sutton	Consideration of argument re disclosure of invasive versus stand-alone external re infringement; conference with T. Sharinn re same.	265.00
04/29/02	William G. Todd	Attend meeting with T. Sharinn and S. Bornstein; formulate infringement strategy; identify presently asserted claims.	1000.00
04/30/02	Todd S. Sharinn	Confer with Bill Todd regarding status and strategy (.3); telephone calls with opposing counsel regarding Markman hearing (.3); prepare request for admissions and interrogatories (1.2).	567.00

GT 0015201

Invoice No.: 888138
Re: Quickie LLC v. MeGtronics
Matter No.: 51822.010400

Page 3

Description of Professional Services Rendered

Total Fees: \$ 25,474.25

DUPLICATE COPY

Invoice No.: 900854
 Re: Quickie LLC v. Medtronics
 Matter No.: 51822.010400

Page 1

Description of Professional Services Rendered:

<u>DATE</u>	<u>TIMEKEEPER</u>	<u>DESCRIPTION</u>	<u>HOURS</u>	<u>AMOUNT</u>
05/01/02	Todd S. Sharinn	Prepare requests for admission (4.2); telephone calls and exchange correspondence with opposing counsel (.6); prepare first set of interrogatories (.6).	5.40	1701.00
05/01/02	William G. Todd	Review and index file history for U.S. Patent No. 6,066,160; supplement Requests for Admissions.	2.00	1000.00
05/02/02	Scott J. Bornstein	Review specification of '160 patent for language supporting asserted claims; review draft requests for admissions; pursue strategy with T. Sharinn.	2.50	875.00
05/02/02	Todd S. Sharinn	Prepare requests for admissions (6.4); confer with W. Todd regarding status and strategy (.2); review and revise interrogatories (.3).	6.90	2173.50
05/03/02	Todd S. Sharinn	Review and revise admissions (.9); telephone calls from opposing counsel regarding stipulation and protective order (.4); review and revise proposed protective order (1.6); confer with W. Todd and S. Bornstein regarding status and strategy (.4); prepare interrogatories and request for documents and things (2.4).	5.70	1795.50
05/03/02	Paul J. Sutton	Receipt and review of proposed Protective Order to be used to govern the parties' confidential documents.	0.60	318.00
05/03/02	William G. Todd	Attention to pre-trial discovery matters; formulate strategic plan (claim construction issues); related consultations with T. Sharinn and S. Bornstein.	2.00	1000.00
05/06/02	Todd S. Sharinn	Review and revise Protective Order (1.2); legal research regarding opposing counsel (.4); review and revise interrogatories (.4); review and revise admissions (.4); review and revise document requests (.5); telephone calls with opposing counsel regarding scope of case and protective order (.6); prepare new proposed protective order (2.3); legal research (1.2).	7.00	2205.00
05/06/02	William G. Todd	Review and redraft written discovery requests, principally Rule 36 requests for admissions; attention to Protective Order issues; related consultations with T. Sharinn and S. Bornstein; finalize index for '160 file history.	1.50	750.00
05/07/02	Denise . Alexander	Faxed letter to opposing counsel.	0.40	64.00
05/07/02	Scott J. Bornstein	Review draft requests for admissions.	0.10	25.00
05/07/02	Todd S. Sharinn	Legal research (2.6); prepare protective order (2.9); review and revise requests for admissions (.4); review and revise document requests (.4); review and revise interrogatories (.3); telephone calls with opposing counsel regarding protective order, and establishing methods of service and communication (.4); letter to opposing counsel (.5).	7.50	2362.50

GT 0015207

Invoice No.: 900854
 Re: Quickie LLC v. Medtronic
 Matter No.: 51822.010400

Page 2

Description of Professional Services Rendered

Date	Attorney	Description of Professional Services Rendered	Hours	Amount
05/08/02	Todd S. Sharinn	Confer with William Todd (.2); legal research regarding discovery in Markman proceedings (1.6); prepare second set of interrogatories (.7); letter to opposing counsel (.1).	2.60	819.00
05/10/02	Todd S. Sharinn	Legal research and strategy (1.2).	1.20	378.00
05/13/02	Todd S. Sharinn	Legal research regarding docket and status of case (.6); confer with Judge's clerk (.3).	0.90	283.50
05/14/02	Todd S. Sharinn	Review and respond to letter from opposing counsel (.3); review outline response to Defendant's Request for Documents and Things, Interrogatories and Requests for Admissions (2.6).	2.90	913.50
05/14/02	William G. Todd	Review Medtronic's written discovery requests; related consultation with T. Sharinn.	0.50	250.00
05/15/02	Todd S. Sharinn	Confer with Bill Todd regarding responses to Defendant's requests, etc. (.3); prepare responses to Defendant's requests, etc. (3.7); review Judge Lynch's rules (.4); telephone call with clerk to Judge Lynch regarding scheduling issues and issues regarding dispute over protective order (.3); telephone call with Alan Fell (.2); telephone call to Steve Colvin and Gene Grossi (.1); confer with Jennifer Shahan and Habibah Tamraz regarding production of documents (.2).	5.20	1638.00
05/16/02	Scott J. Bornstein	Review and revise draft discovery requests.	0.50	175.00
05/16/02	Jennifer T. Shahan	Discussion of manner of production work to be done, e.g., what codes to be used in flag/pull of documents, with paralegal and fellow associate. Receipt and response re: production of documents with paralegal to determine codes used in production. Various emails during the day with assistant and para re: documents and file.	0.80	204.00
05/16/02	Todd S. Sharinn	Telephone call with A. Katz (.1); review letter from counsel regarding protective order (.1); telephone call with opposing counsel regarding protective order and various discovery issues (.4).	0.60	189.00
05/16/02	William G. Todd	Attention to discovery matters (claim construction); review incoming correspondence; related consultations with T. Sharinn.	0.50	250.00
05/17/02	Ann Marie D'Istria	Meeting with T. Sharinn and J. Shahan re: upcoming production	0.25	35.00
05/17/02	Jennifer T. Shahan	Call into paralegal for meeting with Todd Sharinn re: document review/production. Meeting with T. Sharinn concerning scope and instructions as to document production; follow up with paralegal as to timing and what order production will follow. Discussion with Assistant re: copying of materials for review. (1.2) Follow up with paralegal concerning work and timing of production; deadline check with Lead Associate on matter. (.4) Quick discussion with fellow associate concerning work needed on project. (.2)	1.80	459.00

GT 0015208

Invoice No.: 900854
 Re: Quickie LLC v. Medtronics
 Matter No.: 51822.010400

Page 2

Description of Professional Services Rendered

05/17/02	Todd S. Sharinn	Organize plaintiff's document production (.6); confer with Jenifer Shahan and Ann Marie D'Istria (.2).	0.80	252.00
05/20/02	Jenifer T. Shahan	Make arrangements with assistant regarding files for review; forward information and instructions to fellow associate.	0.40	102.00
05/20/02	Todd S. Sharinn	Confer with opposing counsel (.6).	0.60	189.00
05/21/02	Jenifer T. Shahan	Receipt and review of instructions from assistant regarding CLS follow up with associate concerning time and availability of work on project. Review of instructions from Lead Associate on project.	0.40	102.00
05/21/02	Todd S. Sharinn	Preparation of responses to Defendant's requests (1.3).	1.30	409.50
05/22/02	Jenifer T. Shahan	Discussion with and explanation of project with summer associate concerning production work needed and time to be spent on it (examine her experience with prosecution, Markman hearings, etc.). Follow up with assistant concerning TSharinn's instructions to hold on matter until his return. (.7) Various follow up emails throughout the day concerning timing and coordination of efforts. (.2)	0.90	229.50
05/22/02	Todd S. Sharinn	Preparation of responses to Defendant's requests (1.9).	1.90	598.50
05/22/02	William G. Todd	Prepare claim charts for '160 patent (claims 13 and 33).	0.50	250.00
05/23/02	Jenifer T. Shahan	Discuss matters of production and work to be done, order of, matters to be covered, considered, etc. with both paralegal and associate. (.5) Various emails and discussion with paralegal and associate concerning codes to be given in designation of documents through production review. Additional work with assistant arranging for copies of pleadings and other documents to be reviewed with assistant. (.6) Coordinate time of meeting with Senior Associate to discuss matter. (.3)	1.40	357.00
05/24/02	Jenifer T. Shahan	Brief discussion with summer concerning meeting to be had later in Day to discuss manner of review for documents, things to look for in consideration of purpose of Markman hearing. Review documents & things provided by Todd Sharinn very quickly to discern what materials are included. Various emails confirming meeting later with associate (next week).	0.60	153.00
05/27/02	Todd S. Sharinn	Review and revise proposed changes to protective order (1.0).	1.00	315.00
05/28/02	Jennifer H. Burdman	Preparation of documents in response to defendant's document request, including marking documents for privilege and relevance.	4.00	740.00

GT 0015209

Invoice No.: 900854
 Re: Quickie LLC v. Medtronic
 Matter No.: 51822.010400

Page 4

Description of Professional Services Rendered

05/28/02	Jenifer T. Shahan	Various emails coordinating time to analyze documents with summer associate. (.3) Analysis and notes thereof of complaint, document requests (from Medtronic). (.4) Review and analysis of documents for production pursuant to requests for production, as they relate to our complaint as filed and matters involved therewith (and in light of purpose of Markman hearing) with (temp) associate. (1.0)	1.70	433.50
05/29/02	Jennifer H. Burdman	Preparation of documents in response to defendant's document request, including marking documents for privilege and relevance.	5.50	1017.50
05/29/02	Jenifer T. Shahan	Review specification and drawings on morning commute into office. (.5) Respond to email from associate working on review of documents. (.2) Review questions (via email) concerning document relevance/privilege from associate; respond to each question providing instructions for identification of documents in question. (1.0)	1.70	433.50
05/29/02	Todd S. Sharinn	Exchange e-mails with Scott Bornstein and William Todd (.2); confer with opposing counsel regarding protective order (.7).	0.90	283.50
05/29/02	William G. Todd	Review proposed Protective Order; research alternative forms.	1.00	500.00
05/30/02	Jennifer H. Burdman	Preparation of documents in response to defendant's document request, including marking documents for privilege and relevance.	1.00	185.00
05/30/02	Jenifer T. Shahan	Additional questions addressed with associate reviewing the documents. Follow up with paralegal concerning timing and possible final review of materials.	0.50	127.50
05/31/02	Jenifer T. Shahan	Various emails; discussion with associate concerning any other questions and any other items per her review. Follow up on review of associate; certain items determined relevant; notes as to others; notice of certain privileged documents. (2.6).	2.60	663.00
05/31/02	William G. Todd	Assemble litigation notebook; revisit Medtronic's discovery requests (interrogatories, documents, admissions).	1.00	500.00

<u>Total Time:</u>	89.05
<u>Total Fees:</u>	\$ 27,714.50

Invoice No.: 911671
 Re: Quickie LLC v. Medtronic
 Matter No.: 51822.010400

Page 1

Description of Professional Services Rendered:

<u>DATE</u>	<u>TIMEKEEPER</u>	<u>DESCRIPTION</u>	<u>AMOUNT</u>
06/03/07	Jenifer T. Shahan	Finish up quick coverage of production from Alan Fell's materials. (.2) Discuss status of production with TSharinn & later with associate concerning later discussions/meeting to be had. (.3)	127.50
06/04/07	Jennifer H. Burdman	Prepare documents for production in response to request by defendant (Markman hearing).	277.50
06/04/07	Jenifer T. Shahan	Brief discussion with associate concerning production. (.2) Meeting with TSharinn and associate concerning manner of progress and future work needed to be accomplished. (.5) Follow up with summer Associate concerning what items I will be reviewing. (.2) Begin review of additional materials in company files. (1.0) Continue with review of work concerning materials in Quickie's own files; come across several materials concerning/regarding prosecution. Notes made concerning certain documents and producibility of such. Additional notes made. Materials (flags). Compare documents to documents in 160 patent; refer to patent at several aspects for determination of relevance. Provide materials to TSharinn with note to discuss questions at later time. (2.7)	1020.00
06/05/07	Jennifer H. Burdman	Evaluate and prepare documents and CDs for possible document production in Markman hearing.	277.50
06/05/07	Jenifer T. Shahan	Discuss matters of files & organization with assistant. Arrange discussion with TSharinn.	127.50
06/06/07	Jenifer T. Shahan	Review files for documents to be disclosed in discovery. (.8) Discuss other materials and organization done by summer associate. (.5) Additional discussions with TSharinn concerning matters of disclosure (.3); follow up with paralegal concerning when will send to copier for replication. (.4)	510.00
06/07/07	Jenifer T. Shahan	Discussion of materials needed to be disclosed with TSharinn as well as items to be included in privilege log.	102.00
06/07/07	Todd S. Sharinn	Review Defendant's objections to discovery requests (.8); telephone calls with local counsel regarding protective order and Defendant's objections to discovery (.4); prepare documents for production (.4).	504.00
06/07/07	Paul J. Sutton	Receipt and review of Medtronic responses to Quickie's discovery requests; consideration of motion to compel/motion to strike Medtronic's pleadings; advice to T. Sharinn.	424.00
06/10/07	Jennifer H. Burdman	Evaluate information on CDs in preparation for document production in response to document request.	92.50
06/10/07	Jenifer T. Shahan	Go through files with assistant to determine what materials will be turned over per discovery (Markman hearing). (.2) Retrieve other materials from summer associate. (.5) Additional review of documents; notes made and categorization of materials to be discussed with Todd Sharinn at later date. (2.0)	510.00
06/11/07	Jennifer H. Burdman	Evaluate information contained on CDs in preparation for document production.	185.00

GT 0015215

Invoice No.: 911671
 Re: Quickie LLC v. Medtronic
 Matter No.: 51822.010400

Page 2

Description of Professional Services Rendered

06/11/02	Jenifer T. Shahan	Review and notes of documents to review at later time with TSharinn. Check with assistant regarding instructions for document production. Work with paralegal locating file history and other materials to be turned over. Various emails to group working on production para's and TSharinn concerning final questions. (1.6) Continue with review while creating of privilege log. Begin drafting of privilege log. (1.8) Email certain questions regarding privileged documents to TSharinn. Resume additional review. (.6)	892.50
06/11/02	William G. Todd	Revisit Medtronic's Requests for Admissions; prepare summary memorandum; related consultations with T. Sharinn.	500.00
06/12/02	Edmund E. Christian	Prepare responses to interrogatories, requests for admissions and document requests.	1325.00
06/12/02	Jenifer T. Shahan	Various emails and checks with TSS concerning documents reviewed; production, etc. Arrange with paralegal those materials for bates stamping and production. Begin work/revisions on privilege log after consultation with BTodd on privilege; begin review of data into log. Continue coordination of matters for copying/production. Draft cover letter; forward to BTodd & TSS. Various emails and checks TSS & para. Continue review of materials for production; get materials on prior art together with para; Continue coordination of matters for copying/production.	1377.00
06/12/02	William G. Todd	Review and evaluate Medtronic's discovery responses; analyze Medtronic's written discovery requests (Interrogatories, Document Requests, Admissions); formulate responsive strategy; review selected production documents; outline schedule of privileged documents; related consultations with T. Sharinn, E. Christian and J. Shahan.	1000.00
06/13/02	Edmund E. Christian	Prepare responses to interrogatories, request for admissions and document requests.	1855.00
06/13/02	Jenifer T. Shahan	Work on production; continue drafting of privilege log. Check at various times during the day with BTodd concerning matters of privilege. Various emails and checks with TSS concerning production; timing, etc. Work with paralegal managing materials for bates stamping and production to opposing counsel. Continue work on privilege log; consult with Word Processing for cost saving work; get paralegal to work on data entry. Continue coordination of matters for copying/production. Work on cover letter.	1683.00
06/13/02	Todd S. Sharinn	Confer with Jenifer Shahan regarding document production (.3); confer with Ed Christian regarding responses/objectives to outstanding discovery requests (.3); confer with Bill Todd regarding responses to requests for admissions (.4).	315.00
06/13/02	Habibah Tamraz	Entering description of documents for production into summation.	60.00
06/13/02	William G. Todd	Redraft Quickie's Responses to Medtronic's First Requests for Admissions	1000.00
06/14/02	Ann Marie D'Istrie	Assist J. Shahan with Privilege Log corrections.	70.00

GT 0015216

Invoice No.: 911671
 Re: Quickie LLC v. Medtronic
 Matter No.: 51822.010400

Page 5

Description of Professional Services Rendered

06/14/02	Jenifer T. Shahan	Review emails and messages from TSharinn and paralegal working on production. Various discussions concerning matters of production, confidentiality and timing of production with both TSS & para. Call to document production center on costs, timing, questions. Draft letter to opposing counsel; discuss such with TSS; edit and redraft. Email information for TSS & para. Arrange materials into folders for storage. Continue drafting in privilege log; various discussions with para throughout day re: production. Delivery of materials from production center; arrange and explain data entry into privilege log; additional and various emails/discussions throughout the day.	969.00
06/14/02	Todd S. Sharinn	Prepare responses to Defendant's requests for documents and things requests for admission and interrogatories (3.5); review and revise privilege log and review documents withheld as privileged on log (1.6).	1606.50
06/14/02	William G. Todd	Additional redrafting of Quickie's responses to Medtronic's written discovery; related consultations with T. Sharinn.	1000.00
06/17/02	Jenifer T. Shahan	Review additional documents as directed by TSS; separate and designate certain documents as privileged. Email instructions, etc. to para for supplemental production. (2.0) Additional work reviewing and preparing documents to send to copy center for bates stamping and correlating them with the privileged documents they were attached to. (.6) Continue work (email/discussions) with paralegal providing instructions re: copying. Follow up with TSharinn concerning questions on productions. (.2)	510.00
06/17/02	Todd S. Sharinn	Review documents withheld as privileged and confer with Jenifer Shahan regarding handling of same (91.4); review documents produced by defendant (3.3); legal research in preparation of Markman Hearing (1.2).	1858.50
06/18/02	Jenifer T. Shahan	Follow up with paralegal concerning new documents for production; follow up to send data entry work to Summer Associate. (.5) Prepare necessary requests and additional materials re: summer work (on data entry) and make further arrangements. (.7)	306.00
06/18/02	Todd S. Sharinn	Prepare Markman brief and conduct legal research (2.6).	819.00
06/19/02	William G. Todd	Formulate strategy for claim construction brief; related consultations with T. Sharinn.	500.00
06/20/02	Todd S. Sharinn	Prepare Markman brief (1.8).	567.00
06/20/02	Jennifer L. Smith	Entered documents into a Privilege Log for Todd Sharinn.	370.00
06/21/02	Todd S. Sharinn	Prepare Markman brief (.9).	283.50
06/25/02	Jenifer T. Shahan	Follow up conversation with Todd Sharinn concerning status of case, possibility of settling case and summer associate's work on privilege log.	102.00
06/30/02	Todd S. Sharinn	Prepare Markman Brief (1.6).	504.00
07/01/02	Todd S. Sharinn	Prepare Markman brief and claim chart (7.1).	2236.50
07/02/02	Todd S. Sharinn	Prepare memorandum of claim construction and claim chart (7.2).	2268.00
07/03/02	Todd S. Sharinn	Prepare and file Markman brief and supporting exhibits and claim chart (9.4).	2961.00
07/05/02	Todd S. Sharinn	Review Medtronic Markman papers (4.1)	1291.50

GT 0015217

Invoice No.: 911671
Re: Quickie LLC v. Medtronics
Matter No.: 51822.010400

Page 4

Description of Professional Services Rendered

Total Fees: \$ 32,387.50

DUPLICATE COPY

Invoice No.: 930770
 Re: Quickie LLC v. Medtronic
 Matter No.: 51822.010400

Page 1

Description of Professional Services Rendered:

DATE	TIMEKEEPER	DESCRIPTION	HOURS	AMOUNT
08/01/02	Scott J. Bornstein	Review and finalize reply memorandum; incorporate changes to memorandum proposed by M. Evens; discussions w/ W. Todd and T. Sharinn.	4.00	1400.00
08/01/02	Jennifer H. Burdman	Research regarding use of prior art as extrinsic evidence.	2.00	370.00
08/01/02	Todd S. Sharinn	Prepare insert to reply brief (.8); exchange e-mails with Bill Todd and Scott Bornstein (.3); finalize and arrange for filing and service of reply brief (.2); confer with Scott Bornstein and William Todd regarding changes to reply brief (.1).	1.90	598.50
08/02/02	Scott J. Bornstein	Case organization and administration.	0.25	87.50
08/02/02	Todd S. Sharinn	Confer with opposing counsel (.3); telephone call from clerk to Judge (.3); review papers filed by Medtronic in reply (.9).	1.50	472.50
08/04/02	William G. Todd	Review/analyze Medtronic's Reply Brief on Claim Construction Issues.	0.50	250.00
08/05/02	Todd S. Sharinn	Review judge's rules (.2); prepare letter to court requesting oral argument (.1).	0.30	94.50
08/07/02	Scott J. Bornstein	Review Medtronic's reply memorandum.	1.50	525.00
08/08/02	Paul A. Juerpensen	Conference with Todd Sharinn and review files.	0.50	75.00
08/08/02	Todd S. Sharinn	Confer with Bill Todd and Scott Bornstein regarding strategy for oral argument (.2); confer with clerk to Judge Lynch regarding oral argument (.3); confer with Paul Juerpensen regarding preparation for hearing (.2).	0.70	220.50
08/09/02	Todd S. Sharinn	Review Medtronic's reply papers (2.2); telephone conferences with Judge's chambers (.6); follow-up call with opposing counsel (.4).	3.20	1008.00
08/13/02	Todd S. Sharinn	Telephone call with client's office regarding oral argument (.2); confer with Bill Todd regarding hearing and preparation of argument (.1); telephone call with opposing counsel (.2); letter to opposing counsel (.2); telephone call with Alan Fell regarding status and strategy (.2).	0.90	283.50
08/13/02	William G. Todd	Office consultation with T. Sharinn.	0.30	150.00
08/14/02	Todd S. Sharinn	Legal research regarding Medtronic's argument (1.1).	1.10	346.50
08/15/02	Paul A. Juerpensen	Pull cases cited in Medtronic Reply Brief.	0.50	75.00
08/15/02	Todd S. Sharinn	Legal research regarding arguments presented by Medtronic (2.4); telephone call with opposing counsel and Judge's clerk (.4); telephone call with Bill Todd and Mark Evans (.6).	3.40	1071.00
08/15/02	William G. Todd	Prepare for and conduct telephone conference with M. Evens and T. Sharinn.	0.50	250.00
08/16/02	Todd S. Sharinn	Prepare for oral argument (1.3).	1.30	409.50
08/22/02	Todd S. Sharinn	Prepare for hearing (1.4); legal research (1.0).	2.40	756.00
08/23/02	Todd S. Sharinn	Prepare for hearing (2.2).	2.20	693.00
08/26/02	Todd S. Sharinn	Prepare for hearing (1.8).	1.80	567.00

GT 0015222

Invoice No.: 930770
 Re: Quickie LLC v. Medtronic
 Matter No.: 51822.010400

Page 2

Description of Professional Services Rendered

08/27/02	Paul A. Juergensen	Pull additional cases and shepardize cases cited in Medtronic's Reply Brief on claim construction.	2.00	300.00
08/27/02	Todd S. Sharinn	Prepare for hearing (7.2).	7.20	2268.00
08/27/02	William G. Todd	Preparation for Markman hearing; related consultations with T. Sharinn.	0.50	250.00
08/28/02	Paul A. Juergensen	Organize files; preparation for Markman hearing; and prepare materials for binders.	7.20	1080.00
08/28/02	Todd S. Sharinn	Prepare for hearing (6.1).	8.10	2551.50
08/28/02	William G. Todd	Preparation for Markman hearing; related consultations with T. Sharinn.	1.00	500.00
08/29/02	Paul A. Juergensen	Further preparation for Markman hearing and preparation of binders; pull all cases cited in Markman Brief; prepare Table of Authorities; and conferences with Todd Sharinn.	7.80	1170.00
08/29/02	Todd S. Sharinn	Prepare for hearing (7.6).	7.60	2394.00
08/29/02	William G. Todd	Preparation for Markman hearing; related consultations with T. Sharinn.	1.00	500.00
08/30/02	Todd S. Sharinn	Prepare for hearing (7.1).	7.10	2236.50
08/30/02	William G. Todd	Preparation for Markman hearing; related consultations with T. Sharinn.	1.00	500.00
08/31/02	Todd S. Sharinn	Prepare for oral hearing (2.1).	2.10	661.50
09/01/02	Todd S. Sharinn	Prepare for hearing and telephone calls with Dr. Colvin and conference call with Bill Todd, Dr. Colvin and Mark Evens (2.7).	2.70	850.50
09/02/02	Todd S. Sharinn	Prepare argument and prepare for hearing (6.1).	6.10	1921.50
09/03/02	Scott J. Bornstein	Discussions with T. Sharinn re strategy for Markman hearing.	0.25	87.50
09/03/02	Paul A. Juergensen	Conferences with Todd Sharinn; prepare for Markman hearing including preparation of slides; exhibits, binders, etc.; take photographs of prototypes and prepare for production; and meet with Allan Katz regarding topics covered by proposed testimony.	14.00	2100.00
09/03/02	Todd S. Sharinn	Telephone calls with Judge's clerk (.3); telephone calls with opposing counsel (.2); letter to opposing counsel (.2); prepare for hearing (9.1); telephone call with M. Evens regarding status and strategy (.2); confer with Paul Sutton regarding argument (.4).	10.40	3276.00
09/03/02	William G. Todd	Preparation for Markman hearing; redraft direct testimony of A. Feld.	2.00	1000.00
09/04/02	Paul A. Juergensen	Further preparation for Markman hearing; conferences with Todd Sharinn; and attend Markman hearing before Judge Lynch.	8.00	1200.00
09/04/02	Todd S. Sharinn	Prepare for, travel to and attend hearing before Judge Gerard E. Lynch (8.2).	8.20	2583.00

Total Time: 135.00
Total Fees: \$ 37,133.00

Invoice No.: 942637
 Re: Quickie LLC v. Medtronics
 Matter No.: 51822.010400

Page 1

Description of Professional Services Rendered:

<u>DATE</u>	<u>TIMEKEEPER</u>	<u>DESCRIPTION</u>	<u>HOURS</u>	<u>AMOUNT</u>
09/03/07	Paul J. Sutton	Meeting with T. Shafiroff and preparation for September 4 Markman hearing.	0.70	371.00
09/05/07	Paul A. Juergensen	Proof and revise Markman hearing slides and prepare set for Judge and opposing counsel.	1.20	180.00
09/05/07	Todd S. Sharinn	Telephone call with Judge's clerk (.2); prepared extra set of exhibits for Judge and opposing counsel (.2); letter to judge (.2).	0.60	189.00
09/11/07	Paul A. Juergensen	Review and update all files and create additional files.	4.00	600.00
09/12/07	Paul A. Juergensen	Review and update files.	2.80	420.00
<u>Total Time:</u>			9.30	
<u>Total Fees:</u>				\$ 1,760.00

GT 0015228

Invoice No.: 961002
Re Quickie LLC v. Medtronic
Matter No.: 51822.010400

Page 1

Description of Professional Services Rendered:

<u>DATE</u>	<u>TIMEKEEPER</u>	<u>DESCRIPTION</u>	<u>HOURS</u>	<u>AMOUNT</u>
10/16/02	Paul A. Juergensen	Prepare files for transfer to Thelen Reid & Priest; conferences with Todd Sharinn; telephone conference with Shari Savitt; and letters to Shari Savitt regarding same.	3.30	495.00
<u>Total Time:</u>			3.30	
<u>Total Fees:</u>				\$ 495.00

DUPLICATE COPY

GT 0015232

EXHIBIT AS



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
 United States Patent and Trademark Office
 Address: COMMISSIONER FOR PATENTS
 P.O. Box 1450
 Alexandria, Virginia 22313-1450
 www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

90/006,460

11/25/2002

6066160

034521-003

3789

and 90/007,085

50086

7590

07/07/2008

EXAMINER

LAW OFFICE OF DAVID H. JUDSON
 15950 DALLAS PARKWAY
 SUITE 225
 DALLAS, TX 75248

ART UNIT

PAPER NUMBER

DATE MAILED: 07/07/2008

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action in Ex Parte Reexamination	Control No. 90/006,460 and 90/007085	Patent Under Reexamination 6066160	
	Examiner Julian W. Woo	Art Unit 3773	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

- a ☒ Responsive to the communication(s) filed on 22 April 2008. b ☒ This action is made FINAL.
c ☐ A statement under 37 CFR 1.530 has not been received from the patent owner.

A shortened statutory period for response to this action is set to expire 2 month(s) from the mailing date of this letter. Failure to respond within the period for response will result in termination of the proceeding and issuance of an *ex parte* reexamination certificate in accordance with this action, 37 CFR 1.550(d). **EXTENSIONS OF TIME ARE GOVERNED BY 37 CFR 1.550(c).** If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

- | | |
|--|---|
| 1. <input type="checkbox"/> Notice of References Cited by Examiner, PTO-892. | 3. <input type="checkbox"/> Interview Summary, PTO-474. |
| 2. <input type="checkbox"/> Information Disclosure Statement, PTO/SB/08. | 4. <input type="checkbox"/> _____. |

Part II SUMMARY OF ACTION

- 1a. ☒ Claims 1-34 are subject to reexamination.
1b. ☐ Claims _____ are not subject to reexamination.
2. ☐ Claims _____ have been canceled in the present reexamination proceeding.
3. ☒ Claims 26 and 30 are patentable and/or confirmed.
4. ☒ Claims 1-25, 27-29 and 31-34 are rejected.
5. ☐ Claims _____ are objected to.
6. ☐ The drawings, filed on _____ are acceptable.
7. ☐ The proposed drawing correction, filed on _____ has been (7a) ☐ approved (7b) ☐ disapproved.
8. ☐ Acknowledgment is made of the priority claim under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some* c) ☐ None of the certified copies have
 1 ☐ been received.
 2 ☐ not been received.
 3 ☐ been filed in Application No. _____.
 4 ☐ been filed in reexamination Control No. _____.
 5 ☐ been received by the International Bureau in PCT application No. _____.
 * See the attached detailed Office action for a list of the certified copies not received.
9. ☐ Since the proceeding appears to be in condition for issuance of an *ex parte* reexamination certificate except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte* Quayle, 1935 C.D. 11, 453 O.G. 213.
10. ☐ Other: _____

cc: Requester (if third party requester)

Application/Control Number: 90/006,460 and
90/007,085
Art Unit: 3773

Page 2

DETAILED ACTION

Reexamination

1. The patent owner is reminded of the continuing responsibility under 37 CFR 1.565(a), to apprise the Office of any litigation activity, or other prior or concurrent proceeding, involving Patent No. 6,066,160 throughout the course of this reexamination proceeding. See MPEP §§ 2207, 2282 and 2286.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-12, 32, and 34 are rejected under 35 U.S.C. 102(b) as being anticipated by Emery (3,988,810). Emery discloses, in the figures, a suture securing apparatus comprising an apparatus body having an upper surface (e.g., at 26), a lower surface (23); a first internal surface (at 25); a second internal surface (at 24) at an acute angular narrowing (with respect to the axis running along the suture shown in figure 3 or 7), an outer surface (27 or 28), first and second apertures that are mirror images of each other (see fig. 7), and an integral locking means comprising at least one ridge (30 or 41), where each aperture has longitudinal and latitudinal axes (located along and/or between the first and second internal surfaces) facilitating longitudinal and latitudinal directions for a suture (T), where each aperture has a length, where at least a portion of the locking means extends along the length of an aperture (rather than the *entire* length of

Application/Control Number: 90/006,460 and
90/007,085
Art Unit: 3773

Page 3

an aperture), where each ridge is formed of a rigid, biocompatible NYLON material (see col. 1, lines 19-23, for its use in wearing apparel, and col. 3, lines 9-11) and has a rounded surface farthest from the aperture surface (see figures 3 and 4), where each ridge is formed at an angle greater than about 30 deg. or at an angle of about 45 deg. (see col. 2, lines 9-15). Moreover, the introductory statement of intended use (for "suture securing") has been carefully considered but deemed not to impose any structural limitations on the claims patentably distinguishable over Emery's device, which is capable of being used as claimed if one desires to do so.

4. Claims 13 and 18-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Richardson (1,243,105). Richardson discloses, in figures 2-4 and 6, a suture securing apparatus with an apparatus body having an upper surface (left side of the body as viewed in fig. 6), a lower surface (right side of the body as viewed in fig. 6), an outer surface (e.g., at 18), first and second apertures (a) each with a longitudinal axis and upper, middle and lower portions as claimed; and first and second movable, serrated cam members (10a) captured in the middle portion of each of the first and second apertures; where each cam member has an engagement end and a rotation end (at 12) or rounded portion, the rotation end being wider than the widths of the upper (14) and lower (13) portions of the aperture; where a cavity of an aperture has a rounded portion (13) cooperating with the rounded portion of the cam member and includes a retaining wall (to the left or right of 13 as viewed in fig. 2); where each cam member moves to an unengaged position (with a suture) in a first longitudinal direction and an engaged

Application/Control Number: 90/006,460 and
90/007,085
Art Unit: 3773

Page 4

position in a second longitudinal direction; and where the first and second apertures and the first and second cam members are mirror images of each other. Moreover, the introductory statement of intended use (for "suture securing") has been carefully considered but deemed not to impose any structural limitations on the claims patentably distinguishable over Richardson's device, which is capable of being used as claimed if one desires to do so.

5. Claim 33 is rejected under 35 U.S.C. 102(b) as being anticipated by Creager (536,684). Creager discloses, in the figures, a suture securing apparatus with an apparatus body (A), first and second apertures (F) each with a longitudinal axis and a cavity (J), and first and second movable cam members (B) in the apertures; where the first and second apertures and the first and second cam members are mirror images of each other, as defined by a mirror plane equidistant from them. Moreover, the introductory statement of intended use (for "suture securing") has been carefully considered but deemed not to impose any structural limitations on the claims patentably distinguishable over Creager's device, which is capable of being used as claimed if one desires to do so.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

Application/Control Number: 90/006,460 and
90/007,085
Art Unit: 3773

Page 5

the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. Claims 14-17, 22, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Richardson (1,243,105) in view of Plante (5,070,805). Richardson discloses the invention substantially as claimed, where the invention can be "used in various ways" as chosen by a user. However, Richardson does not disclose that the middle portion of the aperture comprises ridges, and that the apparatus is made from elastic, rigid, biocompatible, or biodegradable materials. Plante teaches a suture securing apparatus, in col. 1, lines 35-42, where, depending on the application for the apparatus, the apparatus can be made of cast metal or plastic. In figures 2 and 3, Plante teaches a middle portion of an aperture that has ridges (48). Plante also teaches, in figure 3, that the apparatus is attached to an unspecified surface (53). Thus, it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the apparatus, or parts thereof, from materials as claimed, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious

Application/Control Number: 90/006,460 and
90/007,085
Art Unit: 3773

Page 6

design choice. In other words, one of ordinary skill in the art would choose a metal or plastic that is elastic, rigid, biocompatible, or biodegradable according to the intended purpose of the device, and because the devices of Richardson and Plante are manipulable by or exposed to humans or animals (i.e., the devices cannot be irritating to tissues). It also would be obvious to one having ordinary skill in the art at the time the invention was made, in view of Plante, to include ridges in the middle portion of an aperture of the device of Richardson. Such ridges would aid in the better securement of a suture retained by Richardson's device.

8. Claims 24, 25, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Emery (3,988,810) in view of Samuels et al. (3,976,079). Emery discloses the invention substantially as claimed, but does not disclose a medical prosthesis device in physical contact or engagement or integrally formed with the suture securing apparatus. Samuels et al. teach, in figures 3 and 9, a suture securing apparatus (34) for temporary, physical contact or engagement or integral formation with a medical prosthesis device (40). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apparatus of Emery, so that it is applied with the medical prosthesis device of Samuels et al. The apparatus of Emery would conveniently allow quick suture securement to the prosthesis device (and quick release of the suture from prosthesis device) with the advantage of a one-piece design, where there are no additional parts to operate or lose as in the device of Samuels et al.

Application/Control Number: 90/006,460 and
90/007,085
Art Unit: 3773

Page 7

9. Claims 28, 29, and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Richardson (1,243,105) in view of Samuels et al. (3,976,079). Richardson discloses the invention substantially as claimed, where the invention can be "used in various ways" as chosen by a user. Moreover, Richardson discloses that "further or others uses and modifications of the device in detailed construction or otherwise will suggest themselves to the skilled mechanic, and the invention may be changed or modified in details or design." However, Richardson does not disclose that the apparatus contacts or engages a medical prosthesis device. Samuels et al. teach, in figures 3 and 9, a suture securing apparatus (34) for temporary, physical contact or engagement or integral formation with a medical prosthesis device (40). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apparatus of Richardson, so that it is applied with the medical prosthesis device of Samuels et al. The apparatus of Richardson would conveniently allow quick suture securement to the prosthesis device (and quick release of the suture from prosthesis device) with the advantage that the Richardson apparatus does not have additional small parts that can be lost during use as in the device of Samuels et al.

Patentable and/or Confirmed Subject Matter

10. Claims 26 and 30 are patentable and/or confirmed.

11. The following is a statement of reasons for the indication of patentable and/or confirmed subject matter: None of the prior art of record, alone or in combination discloses a securable medical prosthesis device comprising a securable medical prosthesis device with, inter alia, a medical prosthesis device and a suture securing

Application/Control Number: 90/006,460 and
90/007,085
Art Unit: 3773

Page 8

apparatus comprising an apparatus body having an upper surface, a lower surface, a first internal surface, a second internal surface, an outer surface, at least one aperture, and a movable cam member or a locking means comprising at least one ridge; and where the medical prosthesis device is a sewing ring implant.

Response to Arguments

12. Applicant's arguments filed on April 21, 2008 have been fully considered but they are not persuasive. The Examiner's response to arguments with respect to each ground is presented below.

Ground 1. The Requester contends that Emery "does not disclose or suggest a 'suture securing apparatus,'" that the preamble use of the word "suture," among other characterizations by the Requester, defines the apparatus's primary use in the medical arts or with "medical sutures," and that Emery does not teach or suggest medical use for his apparatus. The Examiner disagrees. As the Requester has pointed out and as Emery states, Emery's apparatus is "not limited to use on wearing apparel." Emery's apparatus is for use with "cord," which includes "elongate articles," such as "cords, cables, ropes." Suture is an elongate article. Furthermore, Merriam-Webster's Collegiate Dictionary, 10th edition, defines "cord" to be "a long slender flexible material usu. consisting of several strands (as of thread or yarn) woven or twisted together." Even the Requestor has stated that suture, for example, may include "stranded stainless steel." Such "stranded stainless steel" also meets the definition of "cord." Therefore, suture can be defined as a type of cord. In short, Emery indeed discloses a securing apparatus for suture, and the claim statements regarding the intended, medical

Application/Control Number: 90/006,460 and
90/007,085
Art Unit: 3773

Page 9

use of the device do not impose any structural limitations on the claims patentably distinguishable over Emery's device, which is capable of being used as claimed.

The Requester also contends that Emery's device does not have "internal surfaces" as claimed and that the aperture of Emery's device does not have "longitudinal and latitudinal axes." Respectfully, the Requestor has mischaracterized the Examiner's position that was set forth in the Office action February 21, 2008. The Examiner cited "internal surfaces" to be "at 25" and "at 24." That is, the "internal surfaces" are the surfaces (exposed to the apertures) of the internal structures labeled as "25" and "24" in the figure. (The Examiner understands that "drawing surfaces in the figure" are not representative of actual or "true surfaces.") The Examiner only pointed out that the "internal surfaces" are about or "at" elements 25 and 24 in the figure.

Moreover, the aperture and the movement of a cord within the aperture are indeed defined with respect to "longitudinal and latitudinal axes." That is, the aperture is a three-dimensional structure defined by three orthogonal axes, and the "V-shaped" construction of the aperture has at least a longitudinal component or dimension and a latitudinal component. Also, the vector of movement of a cord within the aperture also has these components. Thus, Emery indeed discloses the structure as claimed.

Ground 2. The Requester contends that Richardson "does not disclose or suggest a 'suture securing apparatus,'" that the preambular use of the word "suture," among other characterizations by the Requester, defines the apparatus's primary use in the medical arts or with "medical sutures," and that Richardson does not teach or suggest a medical application for his apparatus. On the contrary, Richardson discloses

Application/Control Number: 90/006,460 and
90/007,085
Art Unit: 3773

Page 10

that his apparatus is applicable to "flexible cord or similar tying or holding element." Again, suture is indeed a type of cord, and suture certainly is a tying or holding element. In short, Richardson indeed discloses a suture securing apparatus, and the claim statements regarding the intended, medical use of the device do not impose any structural limitations on the claims patentably distinguishable over Richardson's device, which is capable of being used as claimed.

Moreover, Richardson indeed discloses an aperture with upper and lower portions, where the "rotation end" of a "movable cam member" has a width wider than upper and lower portions of the aperture. The upper and lower portions of the aperture include, respectively, openings 14 and 13 as shown in figure 2.

Ground 3. The Requester contends that Creager "does not disclose or suggest a 'suture securing apparatus,'" that the preambular use of the word "suture," among other characterizations by the Requester, defines the apparatus's primary use in the medical arts or with "medical sutures," and that Creager does not teach or suggest a medical application for his apparatus. On the contrary, the ENCARTA World English Dictionary includes, in its definition of "suture": "a piece of material used to close a wound or connect tissues, e.g. catgut, thread, or wire." That is, suture can be defined as "wire," or stranded metal as the Requester has suggested. Creager discloses that his apparatus is usable with "wires" or specifically, wires that are conductive of electricity--likely to be metallic wires, even stranded metal. Thus, Creager's device indeed is a securing apparatus applicable to suture, and the claim statements regarding the intended, medical use of the device do not impose any structural limitations on the

Application/Control Number: 90/006,460 and
90/007,085
Art Unit: 3773

Page 11

claims patentably distinguishable over Creager's device, which is capable of being used as claimed. . Also, wires are movable through the apertures of Creager. This movement can be characterized as threading.

Moreover, Creager's device indeed allows for cam member movement between engaged and unengaged positions, where suture is moved or threaded through an aperture in a first longitudinal direction for engagement with or locking by the cam member and a second longitudinal direction for disengagement with or release from the cam member.

Ground 4. The Requester contends that Richardson and Plante have nothing to do with medical sutures. As argued above, Richardson indeed is applicable to sutures, and Richardson discloses the invention substantially as claimed. Plante's device is within the same, analogous art as Richardson's device (the art of securing cords and ropes), and Plante offers teachings regarding the materials and structural features used to form a securing apparatus. Regarding materials for the devices, for example: One of ordinary skill would choose a biocompatible material to form either of the devices of Richardson and Plante, since the devices are exposed to human bodies. And since a device can be rendered biocompatible, it can have a medical application or be used with medical sutures. Thus, Richardson and Plante were combined to arrive at the invention as claimed, and a prima facie of obviousness was presented in the Office action.

Ground 5. The Requester contends that Emery and Samuels do not suggest the subject matter of claim 1. On the contrary and as argued above, Emery indeed is applicable to medical sutures, and Emery discloses the invention substantially as

Application/Control Number: 90/006,460 and
90/007,085
Art Unit: 3773

Page 12

claimed. The device of Samuels is within the same, analogous art as Emery's device (the art of securing cords), and Samuels offers teachings regarding medical prosthesis device used with a suture securing apparatus. Thus, Emery and Samuels were combined to arrive at the invention as claimed, and a prima facie of obviousness was presented in the Office action.

Ground 6. The Requester contends that Richardson and Samuels do not suggest the subject matter of claim 13. On the contrary and as argued above, Richardson indeed is applicable to medical sutures, and Richardson discloses the invention substantially as claimed. The device of Samuels is within the same, analogous art as Richardson's device (the art of securing cords), and Samuels offers teachings regarding medical prosthesis device used with a suture securing apparatus. Thus, Richardson and Samuels were combined to arrive at the invention as claimed, and a prima facie of obviousness was presented in the Office action.

The Requester further contends that the invention produced an "unexpected result" in securing suture and that the result was not predictable in view of Emery, Richardson, Plante, Samuels, or combinations thereof. The Requester is reminded that it is well-settled that a patent cannot be granted for the discovery of a result, even though it may be unexpectantly good, which would flow logically from the teachings of the prior art. As shown in the Office action and as argued above, the securement of suture, as claimed, flows logically from the teachings of Emery, Richardson, Plante, Samuels, or combinations thereof.

Application/Control Number: 90/006,460 and
90/007,085
Art Unit: 3773

Page 13

Finally, the Requestor contends that the prior art cited above (except for Samuels) is "non-analogous" to the art of the invention. The Requester is reminded that the determination that a prior art reference is from a non-analogous art is twofold. First, the Office decides if the reference is within the field of inventor's endeavor. If it is not, the Office proceeds to determine whether the reference is reasonably pertinent to the particular problem with which the inventor was involved. In this case, the Examiner posits that Emery, Richardson, Plante, and Samuels are within the same, analogous art—the art of securing elongated, flexible articles, such as cords, ropes, wires, and sutures. Although Emery, Richardson, and Plante may not explicitly teach or suggest medical use for their devices, these references are indeed reasonably pertinent to the particular problem with which the inventor was involved (i.e., the securement of suture).

Conclusion

13. THIS ACTION IS MADE FINAL.

A shortened statutory period for response to this action is set to expire TWO (2) MONTHS from the mailing date of this action.

Extensions of time under 37 CFR 1.136(a) do not apply in reexamination proceedings. The provisions of 37 CFR 1.136 apply only to "an applicant" and not to parties in a reexamination proceeding. Further, in 35 U.S.C. 305 and in 37 CFR 1.550(a), it is required that reexamination proceedings "will be conducted with special dispatch within the Office."

Application/Control Number: 90/006,460 and
90/007,085
Art Unit: 3773

Page 14

Extensions of time in reexamination proceedings are provided for in 37 CFR 1.550(c). A request for extension of time must be filed on or before the day on which a response to this action is due, and it must be accompanied by the petition fee set forth in 37 CFR 1.17(g). The mere filing of a request will not effect any extension of time. An extension of time will be granted only for sufficient cause, and for a reasonable time specified.

The filing of a timely first response to this final rejection will be construed as including a request to extend the shortened statutory period for an additional month, which will be granted even if previous extensions have been granted. In no event however, will the statutory period for response expire later than SIX MONTHS from the mailing date of the final action. See MPEP § 2265.

14. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Julian W. Woo whose telephone number is (571) 272-4707. The examiner can normally be reached Mon.-Fri., 7:00 AM to 3:00 PM Eastern Time, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the Examiner's supervisor, Jackie Ho can be reached on (571) 272-4696. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

Application/Control Number: 90/006,460 and
90/007,085
Art Unit: 3773

Page 15

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Julian W. Woo/
Primary Examiner, Art Unit 3773

Conferees:

/(Jackie) Tan-Uyen T. Ho/
Supervisory Patent Examiner, Art Unit 3773

/Darwin P. Erezol/
Primary Examiner, Art Unit 3773

July 6, 2008



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

THIRD PARTY REQUESTER'S CORRESPONDENCE ADDRESS

DANIEL W. LATHAM
MEDTRONIC, INC.
710 MEDTRONIC PKWY, NE MS-LC 340
MINNEAPOLIS, MN 55432

EX PARTE REEXAMINATION COMMUNICATION TRANSMITTAL FORM

REEXAMINATION CONTROL NO 90/006460

PATENT NO. 6,066,160

ART UNI 3773

Enclosed is a copy of the latest communication from the United States Patent and Trademark Office in the above identified ex parte reexamination proceeding (37 CFR 1.550(f)).

Where this copy is supplied after the reply by requester, 37 CFR 1.535, or the time for filing a reply has passed, no submission on behalf of the ex parte reexamination requester will be acknowledged or considered (37 CFR 1.550(g)).



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

THIRD PARTY REQUESTER'S CORRESPONDENCE ADDRESS

KENNETH L. CAGE
McDERMOTT, WILL & EMERY, LLP
600 13th STREET, N.W.
WASHINGTON, DC 20005-3095

EX PARTE REEXAMINATION COMMUNICATION TRANSMITTAL FORM

REEXAMINATION CONTROL NO 90/007085

PATENT NO. 6,066,160

ART UNIT 3773

Enclosed is a copy of the latest communication from the United States Patent and Trademark Office in the above identified ex parte reexamination proceeding (37 CFR 1.550(f)).

Where this copy is supplied after the reply by requester, 37 CFR 1.535, or the time for filing a reply has passed, no submission on behalf of the ex parte reexamination requester will be acknowledged or considered (37 CFR 1.550(g)).
